



# Ordinary Council Meeting Agenda

**Monday 19 October 2020 at 7 PM**

**Virtual Meeting via Zoom, Virtual Meeting  
via Zoom**

## **Vision**

Stonnington will be an inclusive, healthy, creative, sustainable and smart community.

Council's vision will be implemented through four key pillars:

- **Community:** An inclusive City that enhances the health and wellbeing of all residents, where people can feel safe, socially connected and engaged.
- **Liveability:** The most desirable place to live, work and visit.
- **Environment:** A cleaner, safer and better environment for current and future generations to enjoy.
- **Economy:** A City that will grow its premier status as a vibrant, innovative and creative business community.

These pillars reflect the shared priorities of our community and Council, and are consistent with our history and vision for a liveable future. For each pillar, there is a framework for our strategies, actions and measures which outline the key services and projects to be delivered to our community. The Strategic Resource Plan sets out how Council will provide the resources needed to implement strategies and actions within the Council Plan.

## **Councillors**

Cr Steven Stefanopoulos, Mayor  
Cr John Chandler, Deputy Mayor  
Cr Sally Davis  
Cr Marcia Griffin  
Cr Judy Hindle  
Cr Jami Klisaris  
Cr Matthew Koce  
Cr Melina Sehr

## **Chief Executive Officer**

Jacqui Weatherill

## **Executive Staff**

Chris Balfour – Director Corporate Services  
Stuart Draffin – Director Planning & Place  
Cath Harrod – Director Covid Response  
Rick Kwasek – Director Environment & Infrastructure  
Greg Curcio – Director Engagement & Innovation  
James Rouse – Acting Director Community & Wellbeing

## **Reconciliation Statement**

We acknowledge that we are meeting on the traditional land of the Boonwurrung and Wurundjeri people and offer our respects to the elders past and present. We recognise and respect the cultural heritage of this land.

## **Affirmation Statement**

We are reminded that as Councillors we are bound by our Oath of Office to undertake the duties of Councillor in the best interests of the people of the City of Stonnington and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in us under the Local Government Act and any other relevant Act.

## **Welcome**

Welcome to a Stonnington City Council meeting. The role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. These meetings are an important way to ensure that the democratically elected Councillors work for the community in a fair and transparent way. Council business is conducted in accordance with Part C – Meeting Procedure section of Council’s Governance Rules.

Councillors carry out the functions, powers, authorities and discretions vested with them under the **Local Government Act 2020**, and any other relevant legislation. Councillors impartially perform the Office of Councillor duties, in the best interests of the City of Stonnington residents, to the best of their skills and judgement.

Councillors must formally declare their conflicts of interest in relation to any items listed on the agenda at the start of the meeting and immediately prior to the item being considered, in accordance with Part 6 – Council integrity, Division 2 – Conflict of Interest of the Act.

## **About this meeting**

The agenda, as specified in Stonnington’s Governance Rules, lists of all the items to be discussed. Each report is written by a Council Officer and outlines the purpose of the report, relevant information and a recommended decision for Councillors. Council will consider the report and either accept, reject or make amendments to the recommendation. Council decisions are adopted if they receive a majority vote from the Councillors at the meeting.

## **Arrangements to ensure meetings are accessible to the public**

Council meetings are generally held at the Malvern Town Hall, corner High Street and Glenferrie Road (entry via Glenferrie Road via the door closest to the Malvern Police Station). The Council Chamber is accessible to all. Accessible toilets are also available. If you require translation, interpreting services or a hearing loop, please contact Council’s civic support on 03 8290 1331 to make appropriate arrangements before the meeting.

To ensure that people in the chamber can follow proceedings, the meeting agenda, motions and proposed alternate resolutions (also known as ‘yellows’), are displayed on a screens.

## **Live webcasting**

Council meetings are broadcast live via Council’s website, allowing those interested to view proceedings without needing to attend the meeting. This gives people who are unable to attend, the ability to view Council decisions and debate. A recording of the meeting is available on our website after the meeting (usually within 48 hours). Only Councillors and Council officers are visible. People in the public gallery will not be filmed, but if you speak, you will be recorded.

## **Members of the gallery**

If you choose to attend a Council Meeting as a member of the public gallery, you should note the role of the Chairperson (usually the Mayor) and your responsibilities under the City of Stonnington Governance Rules – Division 8 – Questions to Council from Members of the Public, Division 12 – Recording of Proceedings and Division 13 Behaviour.

Your cooperation is appreciated. We hope you enjoy the meeting.

**Mayor, Deputy Mayor and Councillors, Stonnington City Council**

# Ordinary Council Meeting Agenda Monday 19 October 2020 Order of Business

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**1 Reading of the Reconciliation Statement and Affirmation Statement**

**2 Introductions**

**3 Apologies**

**4 Adoption and confirmation of minutes of previous meeting(s)**

**4.1 Minutes of the Ordinary Council Meeting held on 5 October 2020**

**Officer Recommendation**

***That the Council confirms the Minutes of the Ordinary Council Meeting of the Stonnington City Council held on 5 October 2020 as an accurate record of the proceedings.***

**5 Disclosure by Councillors of any conflicts of interest**

**6 Questions to Council from Members of the Public**

**7 Correspondence (only if related to Council business)**

**8 Questions to Council Officers from Councillors**

**9 Tabling of Petitions and Joint Letters**

**10 Notices of Motion**

Nil.

**11 Reports of Special and Other Committees - Informal Meetings of Councillors**

**12 Reports by Delegates**

**13 Urgent Business**



## 14 General Business

### 14.1 Planning Application 0247/20 - 1 Smyth Street, Toorak

**Manager Statutory Planning: Alex Kastaniotis**  
**Director Planning & Place: Stuart Draffin**

#### Purpose of Report

For Council to consider a planning application for the construction of a multi-dwelling development in a General Residential Zone at 1 Smyth Street, Toorak.

#### Officer Recommendation Summary

That Council authorise Officers to issue a **Notice of Decision** subject to conditions outlined in the Officer Recommendation.

#### Executive Summary

Applicant:	Urbis
Ward:	North
Zone:	General Residential Zone Schedule 10 (GRZ10)
Overlay:	Nil
Neighbourhood Precinct:	Garden Suburban Area 1
Date Lodged:	2 April 2020
S57A Amendment:	4 September 2020
Statutory Days: (as at Council Meeting date)	45
Trigger for Referral to Council:	Number of objections received
Number of Objections:	31 objections from 22 properties
Consultative Meeting:	Yes – held 21 July 2020
Officer Recommendation	Notice of Decision to Grant a Planning Permit

#### Background

##### The Proposal

The plans that form part of the basis of Council's consideration were prepared by Christopher Doyle Architects and are known as Drawings PD1-41, Council date stamped 4 September 2020.

The application seeks to construct a three-storey apartment building, comprising 5 x three-bedroom dwellings. A total of 10 car parking spaces are provided in a basement level, accessed via Smyth Street.

Key features of the proposal are:

- The Basement includes the provision of 10 car spaces (two allocated to each dwelling), with associated storage, services bin room and access to the central lift/lobby core.
- Ground Floor comprises Dwelling 1 positioned to the west, oriented to Smyth Street, with Dwelling 2 located to the rear and a central entry lobby accessed via a pedestrian gate to the south of the Smyth Street frontage. Private open space areas for Dwellings 1 and 2 are provided in the form of a separate terraced area to each dwelling. It is noted that Dwellings 1 and 2 are provided with a secondary terrace area on the northern elevation.
- Access to the Basement level is provided via a single crossover to the north of the Smyth Street frontage at ground level, with the accessway positioned along the northern boundary of the site.
- First Floor level comprises Dwellings 3 and 4, with Dwelling 3 oriented to the Smyth Street frontage and Dwelling 4 to the rear, separated by the central lobby and lift. Private open space to Dwelling 3 is provided in the form of two balconies, positioned either side of the lounge/dining area. Dwelling 4 is provided with a balcony positioned at the rear.
- Second Floor is comprised of Dwelling 5, with a balcony positioned to the west (Smyth Street façade) as well as to the rear.
- The proposed development has an overall height of 10.0 metres from natural ground level.
- The residential building is of contemporary design expression, with materials and finishes including face brick, stone and steel cladding, metal steel lattice screening and a flat roof.

It is noted that Section 57A Amended Plans were submitted 4 September 2020, which replace the architectural plans advertised in June 2020. The changes made were in response to the internal referral advice as well as discussions following community consultation. Alterations to the plans are summarised as follows:

- Ground Floor:
  - Increased depth and width of indentation in built form to the centre of the northern elevation from 3.4 metres to 4.1 metres; and
  - Increased setback of the rear portion of the building (Dwelling 2) from the northern boundary from 2.6 metres to 3.1 metres.
- First Floor:
  - Increased depth and width of indentation in built form to the centre of the northern elevation from 3.4 metres to 4.1 metres; and
  - Increased setback of the rear portion of the building (Dwelling 4) from the northern boundary from 2.6 metres to 3.1 metres.
- Second Floor:
  - Increased setback of the southern wall of the dining/lounge/terrace associated with Dwelling 5 from 5.8 metres to 7.0 metres (to the wall);
  - Increased setback of built form associated with the stairwell on the southern elevation from 4.2 metres to 4.7 metres as well as 'squaring off' the design to reduce visual prominence;
  - Increased width of indentation in built form to the centre of the northern elevation from 4.5 metres to 7.3 metres; and

- Alterations to the configuration of the eastern terrace associated with Dwelling 5 (no reduction in setback of terrace from eastern boundary) to accommodate the increased width of the indentation as above.

All relevant Elevation and Section plans were also updated to reflect the above listed changes. It is noted that additional Plans PD40, PD41 and PD42 were submitted which demonstrate the alterations in building footprint, as compared to the VCAT refusal plans for the previous application (979/18), as well as the plans advertised in June 2020 under the current application.

### Site and Surrounds

The site is located on the eastern side of Smyth Street and due to the configuration of the street and surrounding allotments, is the only allotment with a Smyth Street address. The adjoining allotments are described in greater detail below. The site has the following significant characteristics:

- The site is generally rectangular in shape, has a frontage to Smyth Street of 18.0 metres, a site depth of 46.5 metres and yields a total site area of approximately 837 square metres.
- Due to the configuration of the adjoining streets, the southern boundary of the subject site includes a frontage to Ashe Grove at the south-west corner of the site for a length of approximately 13 metres.
- The site is generally flat, with a minimal downward slope towards the rear (east) of the site.
- The site contains minimal vegetation, with one small Camellia tree located adjacent to the south boundary (Tree 11 as identified within the submitted Arborist report). There are a number of small-medium sized canopy trees located within adjoining properties within close proximity (less than 2.0 metres) of the title boundaries of the subject site. Three street trees are located within the frontages to Smyth Street and Ashe Grove. The two street trees within the frontage to Smyth Street (identified as Trees 3 and 4) are Pin Oaks, which are proposed to be retained. The most significant tree associated with the site is the English Oak (Tree 2) which is located in a visually prominent location within the Ashe Grove street reserve and is also proposed to be retained.
- Vehicle access to the site is gained via an existing single crossover to the Smyth Street frontage, positioned approximately 4.7 metres from the title boundary at the corner of Smyth and Ashe Grove. The crossover provides access to an existing concrete driveway, which runs along the southern side of the existing dwelling to the rear of the allotment, to a double car garage.

Land adjoining the subject site is described as follows:

- **North** – The northern boundary of the subject site is shared by several properties, fronting Tashinny Road. These properties (6-8, 10, 12, 14 and 16 Tashinny Road) generally abut the subject site with their areas of rear secluded private open space.
  - 6-8 Tashinny Road features two attached single storey brick dwellings with hipped, tiled roof forms. Both dwellings are oriented to Tashinny Road, with private open space in the rear (north of the subject site) and no onsite car parking provision. It is noted that Planning Permit 76/17 was issued on the land on 4 January 2018, for the construction of two, three-storey dwellings. Details of this permit are provided within the application history section of this report below.
  - 10 Tashinny Road features a double storey brick dwelling with a pitched, tiled roof. On-site parking is not provided and secluded private open space is located in the rear.

- 12 Tashinny Road features a single storey brick dwelling with a combination of a pitched, tiled roof and a pressed metal roof. On-site parking is not provided and secluded private open space is located in the rear.
- 14 and 16 Tashinny Road accommodate residential dwellings with a shared wall along the central property boundary. The dwellings are constructed with a combination of a pitched, tiled roof and a pressed metal roof. Secluded private open space is in the rear of the properties, with landscaping in both the front and rear setbacks.
- **South** – To the south, the subject site abuts 10 Ashe Grove, which is a single storey rendered brick dwelling. The dwelling features a tiled roof, with a crossover to Ashe Grove. Private open space is provided to the rear (east), which accommodates landscaping and a small outbuilding. The dwelling includes habitable room windows facing north, towards the subject site.
- **East** – The subject site abuts the properties at 8 and 12 Ellerslie Place to the east.
  - 8 Ellerslie Place accommodates a two-storey apartment building with basement car parking. The rear setbacks of the development from the shared boundary at both levels are minimal. There is no secluded private open space in the rear of the development, abutting the subject site.
  - 12 & 14 Ellerslie Place accommodates two single storey attached dwellings, each provided with a crossover in the north-east (No 12) and south-east (No 14), providing access to on-site parking for each dwelling. Secluded private open space to each dwelling is to the rear (west), abutting the subject site. A large tree and scattered vegetation are located in the rear secluded private open space of No 12, with minimal vegetation located within the secluded private open space of No 14.
- **West** – Smyth Street immediately abuts the subject site to the west. This street facilitates two-way access with on street parking available on both sides of the road. 11 Ashe Grove is located on the opposite side of the road, which accommodates a single storey dwelling. The site is located on the corner of Smyth Street and Ashe Grove. The dwelling is constructed with a pitched tiled roof and includes high solid fencing to Smyth Street and Ashe Grove with landscaping throughout.

The immediate neighbourhood of Smyth Street and Ashe Grove is characterised by predominantly one and two storey development, with some three-storey developments in the wider area.

The subject site is located between the Toorak Village and Hawksburn Village Activity Centres, both of which are classified as large Neighbourhood Activity Centres. The site has convenient access to public transport and commercial facilities, with Hawksburn Railway Station located 215 metres and Toorak Village located 500m from the site.

### Planning Application History

The following planning applications are relevant to the subject site and surrounding area:

- **1 Smyth Street (subject site)** – Planning application 979/18 for the construction of a multi-dwelling development (five dwellings in a three-storey apartment building) was refused by Council on 21 May 2019, pursuant to the following grounds (summarised):
  - Height, scale and design inconsistent with Neighbourhood Character as well as numerous State and Local Planning Policies;
  - Adverse impacts to adjoining properties due to bulk and insufficient setbacks;
  - Unreasonable traffic and parking impacts to surrounding area; and
  - Inadequate landscaping response.

The decision was appealed by the applicant at VCAT, with Council's decision upheld by the Tribunal dated 12 November 2019. No permit was issued.

It is important to note that in its decision, the Tribunal acknowledged that the site was capable of accommodating a multi-storey, multi-dwelling proposal. However, the Tribunal's Order of 12 November 2019 (the Order), provided detailed discussion regarding the shortcomings of the proposal. These shortcomings are discussed in detail throughout the assessment section of this report.

- **11 Ashe Grove** – Planning application 1306/18 for the construction of a multi-dwelling development (seven dwellings within a three-storey apartment building with a maximum height of 10 metres) was refused on 20 June 2019, pursuant to the following grounds (summarised):
  - Inadequate landscaping;
  - Excessive height, scale and massing,
  - Inconsistency with Neighbourhood Character as well as numerous State and Local Planning Policies;
  - Inadequate building setbacks;
  - Unreasonable overlooking;
  - Access to the site not being adequate, convenient or safe.

The decision was appealed by the applicant at VCAT, with Council's decision upheld by the Tribunal dated 28 February 2020. No permit was issued.

- **6-8 Tashinny Road** – Planning Permit 76/17 was issued on 4 January 2018 and allows for the construction of two three-storey townhouses. It is noted that a Building Permit was issued for the demolition of the existing dwellings in August 2018 (no planning permit required) however demolition of the adjoining dwellings has not commenced at the time of writing of this report. It is noted that the permit expiry has been extended and works must commence by 4 January 2022 (completion by 4 January 2024). At the writing of this report works as approved by the permit have not commenced.

### The Title

The site is described on Certificate of Title Volume 03435 Folio 987 / Lot 1 on Plan of Subdivision 376408D and no covenants or easements affect the land.

### Planning Controls

The following controls/permit triggers are considerations for this application:

#### *Zone*

- Clause 32.08 – General Residential Zone (GRZ)

Pursuant to Clause 32.08-6 a permit is required to construct two or more dwellings on a lot.

#### *Particular Provisions*

- Clause 52.06 – Car Parking
- Clause 52.34 – Bicycle Facilities
- Clause 55 – Construction of two or more Dwellings on a lot (including Clause 55.07 – Apartment Developments)

Pursuant to Clause 32.08-4 of the Stonnington Planning Scheme, a planning permit is required to construct two or more dwellings on a lot. A development must meet the requirements of Clause 55.

Schedule 10 (Garden River and Garden Suburban Precincts) to the GRZ sets out a maximum height limit of 9.0m (or 10.0m if the slope of the natural ground level at any cross section wider than 8m of the site of the building is 2.5 degrees or more). The proposed development qualifies for the maximum allowable height of 10.0 metres due to the topography of the land as demonstrated on Site Section plan PD36. The proposal is compliant as it seeks to construct to a maximum height of 10.0 metres from natural ground level with no more than three storeys at any point. It is noted that the lift overrun has a height of 10.008 metres from natural ground level, which is an allowable encroachment and is not calculated within the mandatory maximum height controls.

Schedule 10 to the GRZ also varies Standards B8 (Site Coverage), B13 (Landscaping), B17 (Side and Rear Setbacks) and B18 (Walls on Boundaries) of Clause 55.

Clause 32.08-4 provides a mandatory minimum Garden Area requirement of 35% to be achieved for the construction of a residential building on a lot greater than 650 square metres. The proposal seeks to provide a total Garden Area of 41.7% which is compliant, this is demonstrated on Plan PD38.

### Relevant Planning Policies

Clause 11	Settlement
Clause 15	Built Environment and Heritage
Clause 16.01	Residential Development
Clause 21.05	Housing
Clause 21.06	Built Environment and Heritage
Clause 22.05	Environmentally Sustainable Design
Clause 22.18	Stormwater Management
Clause 22.23	Neighbourhood Character Policy
Clause 32.08	General Residential Zone
Clause 52.06	Car Parking
Clause 52.34	Bicycle Facilities
Clause 53.18	Stormwater Management in Urban Development
Clause 55	Two or more Dwellings on a Lot (ResCode)
Clause 65	Decision Guidelines

### Advertising

The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987 by sending notices to the owners and occupiers of adjoining land (and by placing two signs on the site, one on each street frontage). The public notification of the application has been completed satisfactorily.

The site is located in North Ward and 31 objections from 22 different properties have been received, they are summarised as follows:

- Inadequate response to VCAT Order (P1114/2019);
- Overdevelopment;
- Excessive height and scale;
- Insufficient setbacks;
- Traffic and parking impacts;
- Building design and materials inappropriate for area;
- Inconsistent with neighbourhood character;
- Excessive site coverage;
- Overlooking/loss of privacy;
- Loss of natural light;
- Overshadowing;

- Issue with any buildings over easement;
- Reduction in private open space;
- Inadequate permeability;
- Special Building Overlay;
- Potential impacts to canopy trees (particularly English Oak within site frontage);
- Impacts during construction;
- Waste management;
- Noise impacts;
- Crossover impacts on existing street tree; and
- Insufficient landscaping.

A Consultative Meeting was held on 21 July 2020. The meeting was attended by Councillors Griffin and Koce, representatives of the applicant, objectors and a Council Planning Officer. The meeting resulted in changes to the plans which were submitted to Council via Section 57A, as described in detail within the Proposal section of this report.

As the formally revised Section 57A plans resulted in a reduction in built form, it is confirmed that no additional material detriment would result from the changes. As such, the revised plans were not required to be formally re-advertised. Notwithstanding this, objectors have been advised of the revised plans with notification of the application to be heard at a Council meeting. The plans have been made available to the objectors for information purposes.

## Referrals

### *Urban Design*

Comments relevant to advertised plans:

- VCAT's refusal of the previous application for this site was concerned with the response to the existing 1 and 2 storey surrounding context of Smyth Street and Ashe Grove.
- The subject site is highly exposed to the public realm and other properties in Ashe Grove and to the private open spaces of the adjoining neighbours to the North. The extent and bulk of the upper storey was an important factor in the VCAT refusal.
- The design has been revised to a more contemporary expression; and whilst this change is supported, the 3-storey building is proposed at the maximum building height. The extent and visual bulk of the upper storey remains problematic with respect to the concerns expressed in the previous VCAT Order.
- In my opinion, the current proposal does not adequately address the concerns expressed in the previous VCAT refusal with respect to the extent of visual bulk presenting to Ashe Grove and to the private open spaces of the adjoining properties to the North.

Comments relevant to amended plans:

- Following the Urban Design Advisor's previous comments, the applicant made a number of revisions to the proposal.
- These revisions consist of increased setbacks to the following areas:
  - Ground Floor - from the North (central indent and rear apartment);
  - First Floor – from North (central indent and rear apartment);
  - Second Floor – from Southern boundary (living area and stairwell); increased width of central indent to North; and consequential alterations to the eastern terrace.

- The aggregate impact of these revisions produces an acceptable reduction in the overall visual bulk of the proposal; relative to the sensitive interfaces to the North and to views from Smyth Street and Ashe Grove.
- In this revised form, the proposal represents a satisfactory response to the concerns raised in the previous VCAT Order.

#### *Environmentally Sustainable Design*

- The proposed development could provide an acceptable outcome from an ESD perspective, provided that details in the report and on plans are consistent and adequate shading is provided to north, east and west glazing of habitable rooms.
- Items for further clarification and some inconsistencies in the documentation and on plans have been identified, these must be rectified prior to endorsement. It is believed that these outstanding items can be dealt with via permit conditions.

#### *Parks*

- No objection to landscaping proposal.
- Any condition relating to vehicle turning circles within close proximity of Tree 4 would need to include confirmation that none of the bluestone of the tree planter is to be removed.
- Conditions of any approval granted will require a Tree Management Plan for the protection of Tree 2 (English Oak) and Trees 3 and 4 (Pin Oaks) which are street trees adjacent to the subject site.
- Conditions of any approval granted will require a Tree Protection bond for Trees 2, 3 and 4 for the following amounts:
  - Tree 2 (English Oak – Ashe Grove) \$21,085.00
  - Tree 3 (Pin Oak – Smyth Street) \$2,759.00
  - Tree 4 (Pin Oak – Smyth Street) \$2,759.00

#### Officer Comment

The above comments are noted and will form conditions of any approval recommended.

#### *Infrastructure*

- No objection subject to conditions relating to site levels, drainage, replacement of the redundant vehicle crossover and storm water management.

#### *Waste*

- No objection subject to conditions relating to the submission of a Waste Management Plan, to address storage and collection of waste from the site in accordance with Council's Waste Management Guidelines.

#### *Transport and Parking*

Parking provision and generation

- The proposal includes 10 parking spaces provided on-site. The number of parking spaces and their dimensions meet the requirements in the Planning Scheme, and are considered satisfactory.
- The applicant is to provide a detailed swept path analysis to clearly show that access and egress can be achieved by a B99 vehicle in one movement.
- There are no visitor parking spaces proposed as the site is located within the Principal Public Transport Network (PPTN).



- No discussion has been provided regarding traffic generation in the Traffic Impact Assessment, however the traffic generated by the proposed development with access for 10 vehicles provided via Smyth Street is unlikely to have a significant impact on the operation of the surrounding road network.
- The kerbside length available for on-street parking would be altered. Based on this new arrangement it would appear that one on-street parking space along the frontage of the site would be maintained just relocated south of the vehicle crossing. This is supported.

#### Access

- The vehicle crossing has a proposed width of 4.3m with 1.3m splays on each side. Based on Council's Vehicle Crossing Policy, this vehicle crossing exceeds the allowable width (3m). However, due to the geometry of the proposed accessway and the close proximity to the tree planter box it is supported in this instance, as the extra width would assist with vehicle movements in and out of the site. The planter box is quite close to the proposed crossing, however if the Arborists have no problems with this then it should be ok.
- Vegetation appears to be proposed within the sightline area. Any vegetation proposed within this splay is to be maintained to a maximum height of 900mm.

### Key Issues and Discussion

#### Strategic Context

The overarching policies and objectives at both a State and Local level encourage urban consolidation in established urban areas and medium density residential development in and around neighbourhood activity centres and close to public transport. These strategies call for well-designed medium-density development that respects neighbourhood character, improves housing choice, making better use of existing infrastructure and improves energy efficiency.

Council's Local Policy on the location of residential development at Clause 21.05-2 seeks to maintain a clear distinction between the type of development outcomes in locations for higher density development and the lower density residential hinterland. The policy seeks to achieve this by classifying different residential areas into three categories: Substantial, Incremental and Minimal Change areas. The subject site is located within an Incremental Change area, which is defined as *'in the remaining residential areas (outside the Heritage Overlay and Neighbourhood Character Overlay), direct multi-unit development (2-3 storeys) to lots capable of accommodating increased density.'*

The subject site is not located on an arterial road however is within close proximity of multiple main roads (Williams, Malvern, Toorak and Orrong Roads) which are well serviced by public transport. As such, it is considered that the subject site is an appropriate location to consider medium-density residential development.

In addition, the subject land is not affected by any overlay provisions and has a site area of approximately 837 square metres, which is considered to be capable of accommodating increased density in line with policy.

The proposed policy response of the current application to the strategic context and location of the site is considered to be consistent with policy expectations.

As discussed above, Planning Application 979/18 for the construction of a multi-dwelling development (3 storeys, 5 dwellings over a basement) was refused by Council on 21 May

2019. The decision was subject to an application for review at VCAT. The Tribunal upheld Council's decision to refuse the application and no permit was issued.

The Tribunal order included detailed consideration and discussion of a number of issues with the proposal. The applicant's response via this application seeks to address the failings raised by the Tribunal as well as Council's refusal. Specific matters examined by the Tribunal included:

- Is the proposed building sufficiently responsive to its street context?
- Are the proposed side and rear interfaces responsive to the side and rear context?
- Does the scale of the building lead to other unreasonable impacts?
- Will the development lead to unreasonable traffic or parking issues in the area?

These matters are considered in detail within the following assessment sections of this report.

## Assessment

### Neighbourhood Character

The subject neighbourhood generally displays a varied built form character with regard to scale and architectural style.

Clause 21.05 (Housing) of the Stonnington Planning Scheme provides direction and policy justification regarding housing supply and the location of residential development within the City of Stonnington. Clause 21.05 seeks to address key issues such as optimising the location of higher density residential development, maintaining distinction between development outcomes in higher vs lower density areas and acknowledging the impact of increased residential density on neighbourhood character and residential amenity.

As set out by Clause 22.23 (Neighbourhood Character Policy) of the Stonnington Planning Scheme, the subject site and surrounds are located within a Garden Suburban Precinct 1.

The statement of preferred character associated with the Garden Suburban 1 precinct directs the following:

*The Garden Suburban 1 (GS1) precinct comprises leafy streetscapes with a range of Victorian, Edwardian or Interwar era and contemporary buildings set in established garden surrounds. In typical streets regular front and side setbacks provide space around buildings and allow for small, well designed garden areas that contribute to the landscape quality of the street. New buildings or additions offer innovative and contemporary design responses while complementing the key aspects of form, general one-two storey scale and design detail of the older buildings. Low, visually permeable front fences retain views to gardens and dwellings from the street. Areas within a Residential Growth or Mixed Use Zone or within a substantial change area will accommodate more development with a more compact setting but with space for canopy trees and other vegetation and high quality, responsive design.*

It is important to note that whilst the statement of preferred character references 'general one-two storey scale', this does not exclude opportunities for three-storey development, as is contemplated by the Zone.

In achieving respect for neighbourhood character, proposed development is not required to replicate existing building stock or to stop change. Instead, it means designing development to respond to the existing and preferred features and characteristics of the neighbourhood. The neighbourhood surrounding the subject site includes distinct examples of departure from conventionally styled dwellings. It is noted that the proposed development employs a

contemporary design form, akin to newer development typology. This design approach is acceptable in principle, in this location.

The proposal seeks to develop the subject site with a two-storey building base with a further recessed third level, comprising five dwellings, with an overall building height of 10.0 metres. The overall height is consistent with the mandatory requirements of the General Residential Zone Schedule 10 (maximum 10.0 metres). It is contemplated that despite its three-storey form amongst predominantly single and double storey development, the proposal seeks to introduce a two-storey base and heavily recessed and articulated third level, with a flat roof. It is noted that the proposed building envelope is not dissimilar to that of a robust two-storey dwelling with a pitched roof form.

In addition, by virtue of sufficient setbacks from all boundaries, landscaping opportunities and materiality, the proposed development will not result in built form that significantly deviates from nor will it detrimentally impact the character of the area. The proposed building does not seek to construct to the boundary at any level (including basement). As it presents to Smyth Street, the building has been designed to include setbacks on both sides to enable sightlines on either side of the building. The front projecting portion of the building is narrow, with terraces further articulating the building façade. It is noted that due to the subdivision pattern of the area, there is no established consistent side/front setback within the street. Surrounding properties include the provision of space within the frontage, as well as along the side boundaries for landscaping.

The proposal includes the provision of basement car parking for all dwellings, accessed via a single accessway/crossover to the northern end of the Smyth Street frontage. The basement level effectively minimises the dominance of car parking and associated structures within the frontage. Furthermore, the proposed accessway wraps behind an existing street tree, with additional landscaping within the frontage, to soften the visual impact of hard surface. This configuration is supported by Council's Arborist and Transport and Parking teams, subject to conditions regarding retention of the street tree and adequate turning circles/sightlines.

The Order set down by the Tribunal with regard to Application 979/18 dated 12 November 2019, contained a number of relevant discussion points pertaining to Neighbourhood Character. This included commentary on how redevelopment of the subject site should consider interfaces to the street frontages as well as to the side and rear.

Of importance, is a statement at Paragraph 8 of the Order, which states (underlined for emphasis):

*8. 'As a three storey apartment building to accommodate five dwellings, the increase in housing on the site is relatively modest. While Mr Brydon made some argument that providing five dwellings on this lot is uncharacteristic of the area, or out of context, it is not the number of dwellings that I find is at issue. The key matter is whether the building form, or design response that results from the dwellings is acceptable.'*

In line with the above, a detailed assessment of the proposal against Clause 22.23 (Neighbourhood Character) as well as the specific findings of the Tribunal's Order with regard to street presentation and side/rear interfaces has been undertaken.

#### *Street presentation*

As described within previous sections of this report, the subject site has a frontage to Smyth Street of 18 metres, a site depth of 46.5 metres and yields a total site area of approximately 837 square metres. Due to the configuration of the adjoining streets, the southern boundary of the subject site includes a frontage to Ashe Grove at the south-west corner of the site for a length of approximately 13 metres.

At Paragraph 27 of the Order, the Tribunal states:

*27. 'To both of these streets [Smyth Street and Ashe Grove] the building will be clearly readable as a three storey building due to the flat roof form at its western end. In principle, I am not concerned this is so, given the zone and policy context, but there remains a question of whether the three storey scale proposed is respectful of its context and reflects the predominant 1 – 2 storey scale of the streetscape as sought by policy directions of clause 22.23. This policy also seeks to ensure the building strengthens the garden setting of buildings, including preventing the loss of front garden space.'*

In support of the proposed height of the development, the Tribunal states at Paragraph 30:

*30. 'I am comfortable that a building that is 9 – 10 metres tall can potentially fit into the existing Ashe Grove context, but I find the lack of open garden to frame and off-set the form sought is not acceptable'*

The current proposal seeks to construct to a maximum height of 10.0 metres from natural ground level, however the design of the revised proposal incorporates greater setbacks, a significantly reduced Second Floor, a flat roof form and greater consideration of landscaping provision and garden setting.

Compared to the VCAT plans, the proposed development seeks to increase setbacks to the front (Smyth Street) title boundary as follows:

*West (Smyth Street)*

	Basement	Ground Floor	First Floor	Second Floor
979/18 - VCAT Plans	4.8m	4.7m	4.7m	7.7m
247/20 - Current Plans	6.0m	5.5m	5.6m	11.0m

It is noted that the basement setback has increased by 1.2 metres from the Smyth Street boundary, which accommodates an area for deep-soil planting of 36 square metres (4.5m x 8m) which has increased from 3.0m x 8m (24 square metres) as considered and refused by VCAT.

Of substantial note is the increase in the setback of the third floor level, from 7.7 to 11 metres to the building façade, as well as the increased setback of the southern wall at the third floor from 5.7 to 7.0 metres. A terrace associated with Dwelling 5 is to be positioned forward of the third floor façade, with integrated planter boxes around the perimeter of the terrace, to further soften and screen views of the third floor from Smyth Street and Ashe Grove.

At Paragraph 35 of the Order, the Tribunal expresses concern with the insufficient response of the previous proposal with regard to garden setting, stating the following (underlined for emphasis):

*35. 'My concern is that the proposal has not given sufficient regard to the need for the front setback to form a garden setting proportional to its building volume, in the way that the existing and preferred character policy seeks. Standing directly opposite, the site clearly forms part of the Ashe Grove context. This is a prominent and overt building that will be quite exposed from these south and south-west views. To the*

*direct south of the site is a large Oak tree in the road reserve. This will soften the views but the visual mass will be significantly greater than its neighbours.'*

Furthermore, with regard to the prominence of the refused scheme, the Tribunal states at Paragraph 37 (underlined for emphasis):

*37. 'I find the mass and prominence of the proposed building too starkly different in this Ashe Grove context, particularly given its lack of garden setting. I am concerned that in the proposal before me, the quest for internal building space has been at the detriment of garden setting and respect of the surrounding smaller building form, that is sought by the character policy.'*

With regard to the above, the current proposal incorporates increased setbacks from Smyth Street and the southern boundary, combined with simplified, less robust contemporary architecture and a flat roof. This enables the proposed development to be read as a predominantly two-storey form with a heavily recessed third-floor. Additionally, the increased setbacks at Basement and Ground level accommodate a more substantial and meaningful landscaping response, which assists to soften views to the development from the street.

It is also important to note that the Tribunal criticized the previous development's limited front setback, which unsuccessfully sought to accommodate pedestrian access to the south, basement access along the north as well as the private open space associated with Dwelling 1, at the detriment of appropriate landscaping. Whilst the configuration of the current proposal seeks a similar layout, it has paid greater attention to deeper setbacks for in-ground landscaping, as well as the 'splitting' of secluded private open space for Dwelling 1 to be in two locations within the front and northern setbacks. The proposed landscaping plan demonstrates the ability to plant four canopy trees within the front setback, notwithstanding the retention of the established English Oak within the nature reserve adjacent to the southern boundary and two Pin Oak's within the nature reserve adjacent to the western boundary.

When considering the context of the immediate area, there is a pattern of front setbacks between 4.0-5.6 metres (excluding pergola/balcony encroachment) within Ashe Grove. In assessing what is considered to be an appropriate front setback for the subject site with regard to neighbourhood character, the average depth of setbacks in the surrounding area as well as prominence of the proposed development within the streetscape should be considered. As the proposal is consistent with the prevailing average depth of setbacks in the immediate area, it is considered that the proposed development represents an appropriate response.

It is noted that the proposed 1.6-2.0 metre high front fence is compatible with the existing varied character of front fences within the street. The fence includes a high level of visual permeability to enable landscaping to be read within the streetscape.

Colours and materials proposed are reflective of those found within the immediate area and include neutral tones of face brickwork, stone and metal cladding. The Materials and Finishes plan (MS01) will be required to be updated to reflect the revised building form of the plans submitted 4 September 2020, via a condition of any approval recommended.

#### Side and rear interfaces

The consideration of Neighbourhood Character includes not only how the development integrates with the street, but also how it responds to its side and rear interfaces. The subject site has a depth of 46.5 metres and due to the subdivision pattern of the immediate area, the land shares direct abutments with a number of residential properties.

The permit applicant prepared a set of three plans (PD40, PD41 and PD42) which indicate the footprint at Ground, First and Second Floor levels, also incorporating details of the footprint of the VCAT plans, the footprint of the advertised plans under the current application, as well as the footprint of the Section 57A amended plans which inform Council's current assessment. It is noted that the plans include terrace areas in the indicative building footprint. These plans demonstrate that not only does the current proposal demonstrate a reduced length of built form, but also a greater level of articulation, particularly along the northern elevation. The interface of the subject site to the north includes the south-facing, individual private open space areas of 10, 12, 14 and 16 Tashinny Road.

The Tribunal provides commentary at Paragraph 41 of the Order, with regard to the northern interfaces:

*41. 'The review site is comparatively large, but a contextual response to its contrasting, smaller and intimate abutments is needed. These are sites that are more constrained by their dimensions and, in a character sense, unlikely to transform into large, three storey forms. There is a need to respond to this condition as part of the character that is likely to remain in the immediate area. I am not satisfied that the scale and mass of the northern facade does this.'*

Of note, are the further comments made by the Tribunal at Paragraphs 42-47, which examine the question of whether meeting the numerical provisions of Standard B17 (Side and Rear Setbacks) of ResCode, determine that the Objective (which seeks an outcome respectful of neighbourhood character) has been met with an acceptable outcome. At Paragraph 43, the Tribunal states:

*43. As legally determined in Li v Whitehorse and again reiterated in Red Star v Bayside 'notwithstanding some departmental practice note suggestions to the contrary, the correct interpretation of the actual statutory provisions is that the objectives must be met, if a related standard is met.'*

Notwithstanding the above and confirming that the proposal before Council demonstrates compliance with Standard B17, an assessment of visual bulk is required to determine whether the proposal responds appropriately to neighbourhood character.

The proposal has been revised to include a deeper and wider indentation within the building's northern elevation at all levels, adjacent to the secluded private open space of 10 and 12 Tashinny Road. It is noted that at ground level, the indentation is 9.0 metres wide and increases the setback of the building from the northern boundary from 2.6 metres to 4.1 metres. The indentation at Ground level accommodates secondary terrace areas (at grade) for Dwellings 1 and 2, with landscaping (including small/medium canopy tree planting along the northern boundary). At First Floor level the indentation mirrors the dimensions and setbacks of the Ground Floor. At Second Floor level, the building footprint has been significantly reduced, with increased setbacks at each elevation and a substantial indentation in the centre of the top level, which includes a non-trafficable planter-box integrated into the built form. Setbacks of the Second Floor have increased from 3.7 metres (VCAT plans) to 5.3 metres, with the central indentation 7.3 metres in width, increasing the setback of the Second Floor to 8.0 metres from the northern boundary.

With regard to consideration of an appropriate response to character for the site and surrounds, The Tribunal states at Paragraph 49 of the Order (underlined for emphasis):

*49. 'In this instance the preferred character is to provide design responses that complement the key aspects of form and general one to two storey scale of older*

*buildings in the area. Many of the broader and approved dwellings in the area are substantive and even a new single dwelling on the review site is likely to lead to a robust new building being visible from these adjoining lots to the north. It is not simply that such a building will be visible, but whether, based on the tests of the planning scheme that apply to a multi-dwelling approval on the lot, the visual mass of the building as a whole is a respectful neighbourhood character response.*

The net impact of the revised built form when compared to the VCAT scheme (as it relates to the northern interface) is a significantly reduced third floor, greater articulation and appropriate breaks in built form to provide visual relief and interest. The proposed setbacks and reduced building footprint allow for an appropriate transition of built form from three storeys, to adjoining one and two storey development, as well as adequate landscaping opportunity around the building – in line with the preferred character of the Garden Suburban Area 1.

The eastern (rear) elevation of the proposed building comprises a two storey base, with a width of approximately 11.8 metres and height of approximately 7.1 metres. The Second Floor is recessed from the lower levels by a depth of 2.1 metres from the eastern (rear) building façade, 2.8 metres from the southern elevation and 2.1 metres from the northern elevation. The proposed building is to be setback between 6.3 – 6.7 metres from the rear title boundary at Ground and First Floor levels, with the Second Floor (excluding terrace) setback 8.4 metres from the rear boundary.

The interface of the subject site to the east features built form associated with a double storey residential building comprising multiple dwellings at 8 Ellerslie Place, as well as secluded private open space associated with 12 Ellerslie Place. It is noted that due to the irregular subdivision pattern of the area as well as varied orientation of dwellings and dwelling typologies, there is no distinct backyard character within the immediate area. The proposal includes generous setbacks which comply with Standard B17 (Side and Rear Setbacks) and enable adequate separation between buildings on adjoining lots. The proposal seeks to construct a built form, which is not unreasonably dominant when viewed from adjoining eastern properties. The proposed built form will also be further softened via proposed medium/large canopy trees to be planted within the rear setback as well as planter boxes integrated into the building.

To the south, the subject site shares a boundary with 10 Ashe Grove, which accommodates a single storey residence, setback substantially further east than the subject site due to the orientation of the allotment. As described within the site and surrounds section of this report, the subject site has a partial street presentation to Ashe Grove for a depth of approximately 13 metres. The proposed development incorporates setbacks of 2.5 metres at Ground Floor, increasing to 2.9 metres at First Floor and 5.7 metres at Second Floor (adjacent to the dwelling at 10 Ashe Grove) and 5.2 metres at the south-western corner of the First Floor and 7.0 metres at Second Floor (adjacent to the Ashe Grove frontage and English Oak).

It is considered that the proposal demonstrates an appropriate response to its southern interface with regard to visual bulk and integration with the garden streetscape setting. The extent of building bulk has been substantially reduced when viewed from the Ashe Grove frontage, particularly at the Second Floor level, which reads as a secondary element to the two-storey base.

Council's Urban Designer has reviewed the proposed development in detail, with consideration to the previous design and its shortcomings. Referral advice from Council's Urban Design Advisor indicates that the proposal in its current form demonstrates an appropriate outcome, which is consistent with Neighbourhood Character.

Consideration has been made to the adjoining interfaces, equitable development and landscaping opportunities onsite, to provide for a building which integrates successfully into the streetscape. More specific to landscaping, the Garden Suburban 1 precinct places a strong emphasis on '*leafy streetscapes*' and '*established garden surrounds*', with '*front and side setbacks to provide space around buildings and to allow for small, well-designed gardens that contribute to the landscape quality of the street*'. As described above, the proposal incorporates adequate setbacks on all sides (including the basement), with provision of deep soil planting, canopy trees and various shrubs and ground covers, consistent with the preferred neighbourhood character. It is also confirmed that the three street trees adjacent to the subject site will be retained and protected via conditions of any permit issued.

In accordance with the above, the proposal is considered to demonstrate an appropriate response to existing and preferred neighbourhood character.

#### Clause 55 – Two or More Dwellings on a Lot (ResCode)

The proposal has been assessed against the provisions of Clause 55 (including the relevant Apartment Development Standards).

#### Built Form

##### *Front Setback*

As previously discussed within the site and surrounds section of this report, the subject site is the only allotment with a direct Smyth Street address. Notwithstanding this, the orientation and configuration of Smyth Street and Ashe Grove result in the site being visually prominent when viewed from Ashe Grove. The proposed front setback is assessed in detail as follows.

The existing dwelling is setback 9.3 metres from Smyth Street. The depth of this setback is an anomaly in the immediate area. It is proposed to construct the residential building 5.5-5.6 metres from the Smyth Street frontage at Ground and First Floor levels, with the Second Floor setback 11.0 metres from Smyth Street. When compared with the previous VCAT plans, this is an increase of approximately 0.9 metres for the two-storey base and an additional 3.3 metres to the Second Floor from Smyth Street.

10 Ashe Grove is located directly south of the subject site and is setback 5.6 metres from the site frontage, however the entire allotment is recessed a minimum of 11.8 metres from the front title boundary of 1 Smyth Street. In addition, the lot at 10 Ashe Grove has an angled front setback, which falls further away from the front title boundary of 1 Smyth Street, with the south-west corner of 10 Ashe Grove recessed a maximum of 23 metres from the south-west corner of 1 Smyth Street. Therefore, it is not practical to compare the depth of the proposed and adjoining front setbacks side by side.

When considering the context of the immediate area, there is a pattern of front setbacks between 4.0-5.6 metres (excluding pergola/balcony encroachment) within Ashe Grove.

The Objective of Standard B6 seeks to ensure '*the setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site*'. Therefore, in assessing what is considered to be an appropriate front setback for the subject site, the average depth of setbacks in the surrounding area as well as prominence of the proposed development within the streetscape should be considered.

It is noted that the Order set down by the Tribunal made the following comments with regard to the assessment of the front setback at Paragraph 31:



*31. 'Numerically I agree with the council that as the only dwelling with a Smyth Street address, the standard requires a six metre setback. It is not specifically that this numeric standard is not met that concerns me. Rather it is the response to character objectives for a garden setting and the visual impact of the building from the Ashe Grove street context that I find problematic.'*

In line with the above, the current proposal seeks a variation to the front setback standard, of 0.4-0.5 metres at Ground and First Floor levels. The revised design seeks to approach this variation in a different manner, by reducing the level of anticipated functionality placed on the front setback as opposed to the VCAT scheme, as described in the 'street presentation' section of this report. The configuration of the front setback as proposed meets the objective of Standard B6 with regard to respecting the existing/preferred neighbourhood character of the area. This has been achieved through the provision of greater, deep soil landscaping provision, which will accommodate four canopy trees as well as the reduction in area of the terrace associated with Dwelling 1, which has been separated into two sections with the second section located within the northern setback.

To the north of the frontage, the proposed basement access provides separation of the proposed building from the adjoining existing dwellings at 6-8 Tashinny Road. It is noted that the minimum setback of the proposed development at 5.5 metres, which is greater than the existing setback of the existing dwelling at 6 Tashinny Road (on the corner of Tashinny Road and Smyth Street), which at its closest point is only 0.5 metres from Smyth Street.

As described in earlier sections of this report, the presentation of the building to Smyth Street and Ashe Grove has been further refined and the bulk and scale significantly reduced from that of the refused VCAT scheme. The building presents primarily as a two-storey form, with a heavily recessed third floor. The projecting portion of the façade to Smyth Street has maximum width of 7.8 metres, with terraces to the north and south of the First Floor. The maximum width of the building of 13.0 metres is achieved behind the aforementioned terraces, with the maximum width set approximately 13.5 metres back from the Smyth Street frontage. Above this two-storey element, the Second Floor is positioned 11.0 metres from the street, which is not only clearly compliant with Standard B6, but results in a non-dominant form with the terrace to Dwelling 5 (and associated planter box) providing further visual relief.

On balance, it is considered that the proposed building responds to the complex site constraints with regard to the front setback. The proposal is reflective of the existing and preferred neighbourhood character of front setbacks.

#### *Site Coverage and Permeability*

The proposal will result in a total site coverage of 54.1%, which is below the prescribed ResCode maximum of 60%. In addition, Schedule 10 to the GRZ directs that a basement should not exceed 75% of the site area. The proposed basement occupies 54.9% of the subject site area, therefore compliance with the varied standard is achieved. In addition, the proposal seeks to provide a total of 32.4% of the site as permeable surface which easily complies with the ResCode requirement of a minimum of 20% of the site area.

#### *Side and Rear Setbacks*

It is noted that the proposed basement is concealed below ground, therefore an assessment of this level against the above provisions is not required.

An assessment of the proposal at all levels from the side and rear boundaries demonstrates full compliance with the provisions of Standard B17:

Ground Floor

	<b>Proposed wall height</b>	<b>Proposed setback</b>	<b>ResCode setback</b>	<b>✓*</b>
<b>N</b>	3.9m	2.1m	1.0m	✓
<b>S</b>	4.0m	2.5m	1.1m	✓
<b>E</b>	4.6m (to terrace) 3.9m (to wall)	3.7m (to terrace) 5.9m (to wall)	1.2m 1.0m	✓ ✓
<b>W</b>	N/A frontage	N/A frontage	N/A frontage	N/A

First Floor

	<b>Proposed wall height</b>	<b>Proposed setback</b>	<b>ResCode setback</b>	<b>✓*</b>
<b>N</b>	7.1m	2.1m	2.1m	✓
<b>S</b>	6.8m	2.9m	1.9m	✓
<b>E</b>	7.9m	6.7m	2.9m	✓
<b>W</b>	N/A frontage	N/A frontage	N/A frontage	N/A

Second Floor

	<b>Proposed wall height</b>	<b>Proposed setback</b>	<b>ResCode setback</b>	<b>✓*</b>
<b>N</b>	9.9m	5.3m	4.9m	✓
<b>S</b>	9.8m	4.78m (cloak room)* 5.7m	4.8m	✓
<b>E</b>	9.7m	8.4m	4.7m	✓
<b>W</b>	N/A frontage	N/A frontage	N/A frontage	N/A

\*The proposed cloak room demonstrates a negligible non-compliance of 0.02m, for a width of 3 metres. The remainder of the elevation demonstrates clear compliance.

It is further noted that Schedule 10 to the GRZ provides the following variation to B17:

*For a distance of at least 5 metres behind the front facade of the building fronting the street, setback new buildings (including basements) a minimum of 2 metres from at least one side boundary and at least 1 metre from the other side boundary up to 3.6 metres in height. Where no setback is specified, standard A10 or B17 applies.*

The proposal adopts a minimum 2.1 metre setback from the northern boundary and 2.5 metre setback from the south, therefore it complies with the varied standard as above.

Amenity Impacts

*Daylight to existing windows*

Standard B19 seeks to ensure adequate daylight is provided into existing habitable room windows. An assessment to each relevant interface is provided below:

North

The subject site and proposed development share residential interfaces with adjoining lots to the north (6-8, 10, 12 and 14 Tashinny Road), to the south (10 Ashe Grove) and to the east (8 and 12 Ellerslie Place). The existing dwellings at 6-8 Tashinny Road adjoining the subject site are single storey, with secluded private open space located to the south of each of the dwellings abutting the subject site. The dwellings are both setback in the order of 12 metres from the boundary shared with the subject site, with a shed located within each of the private open space areas. On this basis, windows positioned on the southern elevation of 6 and 8 Tashinny Road are provided with a minimum light court of 3 square metres with a minimum dimension of 1.0 metre clear to the sky, in accordance with Standard B19.

The dwellings at 10, 12 and 14 Tashinny Road are oriented with secluded private open space adjoining the shared boundary, with the proposed development setback a minimum 2.6 metres from the northern boundary. As such, it is considered that the proposed development will not have an adverse impact on daylight access to the adjoining dwellings to the north as a minimum light court of 3 square metres with a minimum dimension of 1.0 metre clear to the sky has been achieved, in accordance with Standard B19.

South

The adjoining dwelling to the south at 10 Ashe Grove is single storey, with three habitable room windows facing the subject site. The dwelling at 10 Ashe Grove is setback 0.9 metres from the shared boundary, with the proposed development setback 2.5 metres. As such, the setback of the proposed development (with additional separation provided by the 0.9 metre setback of 10 Ashe Grove) achieves the minimum light court of 3 square metres with a minimum dimension of 1.0 metre clear to the sky, in accordance with Standard B19.

East

To the east, the subject site abuts 8 Ellerslie Place, which comprises a double storey residential building, with one habitable room window facing the subject site on the first floor. The adjoining window is setback 2.1 metres from the shared boundary, with the proposed development setback a minimum distance of 6.3 metres opposite the existing adjoining window. It is confirmed that the proposal achieves the minimum light court of 3 square metres with a minimum dimension of 1.0 metre clear to the sky in accordance with Standard B19. Also to the east, the subject site abuts the secluded private open space associated with 12 Ellerslie Place, which is a single storey dwelling. The dwelling at 12 Ellerslie Place includes one habitable room facing the subject site, setback 5.7 metres from the shared boundary, with the proposed development setback a minimum distance of 6.6 metres opposite the existing adjoining window. It is confirmed that the proposal achieves the minimum light court of 3 square metres with a minimum dimension of 1.0 metre clear to the sky, in accordance with Standard B19.

*North-facing windows*

An assessment of the proposal at all levels from the southern boundary demonstrates full compliance with the provisions of Standard B20:

South elevation

	<b>Proposed wall height</b>	<b>Proposed setback</b>	<b>ResCode setback</b>	<b>✓*</b>

<b>GF</b>	4.0m	2.5m	1.2m	✓
<b>FF</b>	6.8m	2.9m	2.9m	✓
<b>SF</b>	9.7m	5.7m	5.7m	✓

Where adjoining windows associated with 10 Ashe Grove, the southern elevation of the Second Floor has a height of 9.7 metres. The Second Floor is setback 4.78 metres in the location of the cloakroom/stairwell for a width of 3.0 metres, with the remainder of the southern elevation at Second Floor setback a minimum of 5.7 metres from the southern title boundary. It is confirmed that the cloakroom/stairwell is not positioned opposite north-facing habitable room windows associated with 10 Ashe Grove. Clause 55 (ResCode) Standard B20 directs that a wall of this height opposite a north-facing habitable room window should be setback 5.7 metres, therefore the proposal demonstrates compliance with Standard B20.

#### *Overshadowing*

Due to the orientation of the subject site and adjoining properties, there is opportunity for the proposed development to overshadow adjoining residential land to the south (10 Ashe Grove) and to the east (8, 12 and 14 Ellerslie Place) within the prescribed timeframes of Standard B21. As such, shadowing impacts to each of these properties are assessed as follows:

#### South (10 Ashe Grove)

From 9am-12pm, the shadows associated with the proposed development fall over a small section of the driveway (beyond what is cast by the boundary fence), with no additional shadows cast over the secluded private open space.

At 1pm, a narrow shadow is cast past that of the fence shadow to the secluded private open space of 10 Ashe Grove. This additional shadow is in the order of 0.5 square metres in area. This shadow is increased by 2pm-3pm, with an area of approximately 1.2 square metres, extending across the shadowing of the fence line.

The additional shadow is minor in scale and does not adversely impact the function or usability of the space. As such, it is considered that the secluded private open space to 10 Ashe Grove will not be adversely impacted upon by shadows cast by the proposed development and the proposal complies with Standard B21.

#### East (8 Ellerslie Place)

Shadows cast by the proposed development do not reach the land at 8 Ellerslie Place until 3pm, where they remain entirely within the shadows cast by the existing 1.8 metre high boundary fence. As such, the secluded private open space of 8 Ellerslie Place will not be adversely impacted upon by shadows cast by the proposed development.

#### East (12 Ellerslie Place)

Shadows cast by the proposed development do not reach the land at 12 Ellerslie Place until 3pm, where they protrude up to 0.3 metres past the shadow cast by the existing 1.8 metre high boundary fence. As such, the secluded private open space of 8 Ellerslie Place will be subject to 1.7 square metres of additional shadow within the area of open space. The secluded private open space to 12 Ellerslie Place exceeds 40 square metres. On this basis, the proposal complies with Standard B21.

#### South-East (14 Ellerslie Place)

It is noted that a shadow is proposed to fall over the secluded private open space of 14 Ellerslie Place at 3pm, which falls entirely within the shadow cast by the existing fence and shed at 10 Ashe Grove. This shadow will not adversely impact the secluded private open space of 14 Ellerslie Place and is therefore acceptable.

#### *Overlooking*

Ground Floor windows are adequately screened in accordance with the requirements of Standard B22 by fencing. All terraces are provided with fixed screens to a height of 1.7 metres from finished floor level which adequately screen views to adjoining areas of secluded private open space/habitable room windows.

A Paragraph 55 of the Tribunal Order, the Member provides the following comment with regard to the excessive use of screening devices:

*55. 'As shown in figures 6 and 7 nearly all first floor windows need to be screened. This adds to the sense of visual mass, particularly along the north side, but also means that internally there is little outlook. Dwelling 4 to the rear of the first floor has every window, and its only outdoor secluded private open space, screened. I find this a poor internal amenity outcome for future occupants. The response appears to derive from a desire to maximise the building volume in a difficult site context, rather than designing to the site constraints. While often upper level windows need to be screened, relying on such an extent of screening is a poor design outcome.*

Clarity with regard to strict compliance with Standard B22 has been provided on Plan PD37 (Screening Details). The proposed elevations demonstrate a preference to use fixed planter boxes with integrated screening devices to mitigate overlooking from a number of terraces and windows. This approach will result in more desirable outcome with regard to internal amenity, as well as providing additional opportunities for the building to be softened with landscaping.

#### *Noise (on and off-site)*

It is considered that the proposal has been designed to ensure services and other mechanical plant have been positioned on site (on the roof and in the basement) in order to minimise impacts on the adjoining residences.

It is anticipated that general noise emitted from the site (following occupancy) will be associated with the typical use of the land for residential purposes.

The proposal seeks to contain noise associated with vehicles within the basement area, the entrance to which is positioned adjacent to the secluded private open space of 6 and 8 Tashinny Road.

It is noted that the Bedroom 2 window associated with Dwelling 1 (within the proposed development) is oriented to the north, with the western wall to remain solid. This assists in the protection of internal amenity within this room as it is located above the accessway to the basement.

It is considered that the design of the building generally seeks to limit off-site impacts with regard to noise, with a central lift core and services located within the basement, in accordance with the Standard.

#### Internal Amenity

##### *Daylight to new windows*

All habitable room windows provided to each of the proposed dwellings have been designed to be oriented to an outdoor space with a minimum area of 3 square metres and minimum dimension of 1.0 metre clear to sky, in accordance with Standard B27. As such, it is considered that each habitable room has access to adequate daylight.

*Secluded Private Open Space*

Standard B28 directs that for each of the proposed dwellings (given the proposed building typology) a balcony of 13.5 square metres with a minimum width of 2.4 metres and convenient access from a living room is required. As demonstrated below, each of the balconies proposed exceeds the relevant requirement. In addition, all primary spaces are accessible via internal living rooms and are of an appropriate layout to maintain usability. Each dwelling is provided with areas of secluded/private open space (including secondary spaces where applicable) as follows:

Dwelling	Type	POS	Minimum dimension	✓*
1	Terrace 2 <sup>nd</sup> Terrace	46.3sqm 10sqm	2.4m 2.0m	✓
2	Terrace 2 <sup>nd</sup> Terrace	28.2sqm 7.2sqm	2.9m 2.0m	✓
3	Terrace/balcony 2 <sup>nd</sup> terrace/balcony	18.5sqm 15.2sqm	2.7m 2.5m	✓
4	Terrace/balcony	19.8sqm	2.4m	✓
5	Terrace/balcony 1 Terrace/balcony 2	28sqm 10sqm	3.4m 2.1m	✓

*Solar access to Open Space*

The majority of open space areas associated with the development are positioned on the eastern and western elevations, with the ability to gain northern-solar access, with the exception of a balcony associated with Dwelling 3 of the First Floor.

The balcony associated with Dwelling 3 is positioned on the southern elevation, at the south-west corner of the building. With a depth of 2.7 metres adjacent to a proposed wall height of 3.2 metres, the proposal fall short of Standard B29 by 1.6 metres (4.8 metres required to meet the Standard). Despite this shortfall, as the proposed balcony is dual aspect with combined southern and western orientation, as well as being one of two balconies associated with Dwelling 3, it is contended that the proposal meets the objective in that the space is able to gain sufficient solar access from the west.

*Services*

The proposed service facilities are to be located within the Basement as well as integrated within the front fence to Smyth Street via a 2.0 metre wide services cupboard. This arrangement is considered to be typical of a development of this nature and is considered acceptable as the fencing incorporates a level of landscaping to soften its appearance. It is noted that a condition of approval will be required to ensure service cupboards do not open over the footpath. The provision of services within the Basement includes structures/plant associated with heating and cooling units.

### Car Parking and Traffic

The application has a car parking requirement of 10 residential spaces. The proposal seeks to provide a total of 10 spaces, therefore the proposal is compliant with on-site car parking provision.

It is noted that as the subject site is located within 400 metres of the Principal Public Transport Network, there is no Planning Scheme requirement for the provision of a dedicated on-site visitor car parking space.

Council's Transport and Parking Department have reviewed the provision of parking and the layout and access arrangements of the basement, and are generally supportive of the proposal subject to conditions regarding confirmation of access for a B99 vehicle via the submission of swept path diagrams.

In addition, Transport and Parking have noted that traffic generation as a result of the proposal is considered satisfactory and is unlikely to have a significant impact on the operation of the surrounding road network.

### Landscaping

There are no significant trees located on the subject site, as confirmed with the submission of an Arborist report (prepared by John Patrick, dated 29 May 2020), detailing all existing trees to be removed from the subject site. All existing trees/vegetation is to be removed from the subject site. As previously discussed, there are three street trees adjacent to the subject site, all of which are proposed to be retained. Council's Arborist has independently assessed the potential impacts of the development on these trees and has concluded that they can and must be retained, with a Tree Management Plan to be included as a permit of any approval granted.

As discussed at length in various sections of this report, the existing and preferred neighbourhood character of the area prioritises landscaping. More specifically, the Garden Suburban 1 precinct places a strong emphasis on *'leafy streetscapes'* and *'established garden surrounds'*, with *'front and side setbacks to provide space around buildings and to allow for small, well-designed gardens that contribute to the landscape quality of the street'*.

The proposed development seeks to provide deep soil planting opportunities for trees in three locations; within the Smyth Street frontage as well as within the north-east and south-east corners (rear) of the site. In addition, the proposal provides opportunity for in-ground perimeter landscaping around the entire site, which is free from hard surface associated with the basement level below.

The proposal has been designed to provide an appropriate level of canopy tree, shrubs and ground cover planting, to enable softening of the appearance of hard surface and to assist the integration of the building into the neighbourhood. Further to in-ground planting, the building has been designed to integrate landscaping in the form of planter boxes at each level, to enhance internal amenity and to soften the external appearance of the building. In addition, with appropriate maintenance, the proposed landscaping will provide a safe, functional and attractive environment.

It is noted that Schedule 10 to the General Residential Zone provides a variation to Standard B13 (Landscaping), which seeks to include the planting of an additional canopy tree above the standard provision. Standard B38 (Deep Soil Planting) provides the minimum area required for deep soil planting, with a minimum of two trees required.

With regard to Standard B38 (Deep Soil areas and Canopy Trees), the subject site is approximately 837 square metres in area, therefore in accordance with Table B5 of the

Standard, 5% of the site area (with a minimum dimension of 3.0 metres) should be set aside for deep soil planting, with 1 small tree per 30 square metres of deep soil.

The proposal incorporates three areas of dedicated deep soil planting, one within the site frontage to Smyth Street with dimensions of 4.5 x 8.0 metres (36qm), one to the north-east with dimensions of 3.5 x 6.2 metres (21.7sqm) and one to the south-east with dimensions of 7 x 3.75 metres (24sqm). These combined areas equate to 9.7% of the total site area, which is well in excess of the requirements of the Standard.

It is noted that the landscaping plan includes the provision of three Ginkgo biloba trees, one in each of the three deep soil planting areas. These trees are capable of reaching a height at maturity of 12 metres, with a spread of 5 metres. In addition, the landscaping plan includes the provision of 28 additional small to medium canopy trees (approximately 6 metres in height at maturity, with varying widths) around the perimeter of the site, in ground. It is therefore considered that the both Standard B13 (including the revised requirements of the GRZ) has been achieved.

Council's Arborist has reviewed the submitted landscaping plan and has indicated support, subject to standard conditions.

#### Environmentally Sustainable Design

The Applicant has submitted a Sustainable Design Assessment (SDA) in response to the application requirements of Clause 22.05-4. The SDA uses the BESS tool to demonstrate that the objectives of Clause 22.05 have been addressed.

The BESS score achieved for the development is 61%, with a minimum of 50% scored within four required categories of Water (50%), Energy (57%), Stormwater (100%) and IEQ (100%).

This score meets best practice and demonstrates the proposal adequately responds to the ESD objectives of Clause 22.05.

Council's ESD department have raised no objection to the proposal, subject to the inclusion of standard conditions on any approval issued.

#### Stormwater Management

The submitted Sustainable Design Assessment submitted with the application included a Water Sensitive Urban Design Response as well as a STORM Rating Report. The submitted STORM Report achieved a rating of 117%. This meets the minimum requirement to satisfy Clause 22.18.

In addition to this, the proposal includes water tanks located within the basement. The submitted SDA indicates that the water tanks are to be connected to toilets within the development, however a condition of any approval granted will require a notation to this effect on the Basement plan.

#### Objections

Matters raised in objections not been specifically addressed within the body of this report are considered as follows:

- Issue with any buildings over easement

It is confirmed that the subject site does not contain any easements.

- Special Building Overlay



It is confirmed that the subject site is not subject to the provisions of the Special Building Overlay and has not been identified as being flood prone. Notwithstanding this, the application was referred to Council's Infrastructure (Drainage) department for comment with regard to the basement, with no objections raised subject to standard permit conditions.

- Impacts during construction

Matters pertaining to impacts during construction are relevant to the Building regulations and are not managed under the Planning approval process. Any concerns related to impacts during construction are the responsibility of the relevant Building Surveyor.

### Conclusion

Having assessed the application against the relevant planning controls, it is recommended that the proposal be supported for the following reasons:

- The application is consistent with Planning Policy which seeks to provide for well-designed residential development which respects neighbourhood character in established urban areas.
- The proposal provides for a satisfactory landscape response that will contribute positively to the landscape character of the area.
- The development will not unreasonably impact upon adjoining amenity as determined by compliance with ResCode (Clause 55) Objectives.
- The proposal satisfies Council's Environmental Sustainable Development and Stormwater Management policies.

### Governance Compliance

#### Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

#### Human Rights Consideration

This application has been assessed in accordance with the requirements of the Planning and Environment Act 1987 (including the Stonnington Planning Scheme), reviewed by the State Government and which complies with the Charter of Human Rights & Responsibilities Act 2006.

### Attachments

1. 0247/20 - 1 Smyth Street, Toorak [14.1.1 - 52 pages]

### Officer Recommendation

***That Council AUTHORISE Officers to issue a Notice of Decision to Grant a Planning Permit No: 247/20 for the land located at 1 Smyth Street, Toorak under the Stonnington Planning Scheme for construction of a multi-dwelling development in a General Residential Zone subject to the following conditions:***

1. ***Before the commencement of the development, one (1) electronic copy of plans drawn to scale and fully dimensioned, must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with revised plans Council date stamped 4 September 2020 prepared by Christopher Doyle Architects but modified to show:***

- a) **An updated Materials and Finishes schedule in line with the revised built form;**
- b) **Service cupboard doors positioned at the Smyth Street frontage designed to not overhang footpath when open;**
- c) **No visual obstructions greater than 0.9 metres in height (including vegetation) maintained within the 2.0 x 2.5 metre sightline triangles either side of the accessway;**
- d) **Swept path diagrams demonstrating the ability for a B99 vehicle to gain access to the site in one movement, with no alterations to the existing bluestone planter associated with Tree 4 (street tree);**
- e) **A notation on the Ground Floor plan referring to the Tree Management Plan as required by Condition 5 of this permit;**
- f) **Tree Protection Zones and associated tree numbers shown on the Ground Floor plan as required by Condition 6 of this permit;**
- g) **A Landscape Plan in accordance with Condition 3;**
- h) **A Tree Management Plan in accordance with Condition 5;**
- i) **A Waste Management Plan in accordance with Condition 12;**
- j) **A Sustainable Design Assessment in accordance with Condition 13; and**
- k) **All information/items to be demonstrated on the relevant development plans as requested by Condition 13.**

**All to the satisfaction of the Responsible Authority.**

- 2. **The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority.**
- 3. **Before the development starts, a landscape plan to be prepared by a landscape architect or suitably qualified or experienced landscape designer, must be submitted to and approved by the Responsible Authority. When approved, the landscape plan will be endorsed and will then form part of the permit. The landscape plan must be drawn to scale with dimensions. The landscape plan must be in accordance with the landscape concept plan Council date stamped 2 April 2020 prepared by John Patrick but modified to show:**
  - a) **A survey (including botanical names) of all existing vegetation to be retained and/or removed;**
  - b) **Buildings and trees (including botanical names) on neighbouring properties within three metres of the boundary;**
  - c) **Details of surface finishes of pathways and driveways;**
  - d) **A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;**
  - e) **Landscaping and planting within all open areas of the site;**
  - f) **The extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site;**

- g) Details of all proposed hard surface materials including pathways, patio or decked areas;*
  - h) A notation referring to the Tree Management Plan as required by Condition 6 of this permit; and*
  - i) Tree Protection Zones as required by Condition 6 of this permit.*
- 4. Before the occupation of the development, the landscaping works as shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority. Landscaping must then be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.**
- 5. Concurrent with the endorsement of development plans a Tree Management Plan prepared by a suitably qualified arborist must be submitted to and approved by the Responsible Authority. When approved, the Tree Management Plan will form part of this permit and all works must be done in accordance with the tree management plan.**

**The Tree Management Plan must detail measures to protect and ensure the viability of the existing street tree within the Ashe Grove frontage (English Oak - Tree 2), the two existing street trees within the frontage to Smyth Street (2 x Pin Oaks - Trees 3 and 4, as well as all existing trees on adjoining properties as identified in the submitted Arborist report prepared by John Patrick, Council date stamped 29 May 2020. Without limiting the generality of the Tree Management Plan it must include the following details and specifications:**

- a) Pre-construction (including demolition) – details to include a tree protection zone, height barrier around the tree protection zone, location and type of tree protection fencing, amount and type of mulch to be placed above the tree protection zone, method of cutting any roots or branches which extend beyond the tree protection zone, boundary fence materials and construction method, location of services and method of installation as well as Site Arborist’s qualifications and site inspection regime.*
- b) During-construction – details to include watering regime during construction and method of protection of exposed roots. Street tree root disturbance must be kept to a minimum.*
- c) Post-construction – details to include watering regime and time of final inspection when barrier can be removed and protection works and regime can cease.*
- d) The outside the Alignment of the Basement where the building is within the Tree Protection Zone for Tree 2 (English Oak), the Ground Floor and all associated sub-flooring (suspended slab) must be built above grade supported by screw piles.*

**Pre-construction works and any root cutting must be inspected and approved by the Parks Unit. Removal of protection works and cessation of the tree management plan must be authorised by the Parks Unit.**

- 6. Before the development (including excavation and demolition) starts, a tree protection fence must be erected around all trees referenced within Condition 5. Fencing is to be compliant with Section 4 of AS 4970.**

7. ***No vehicular or pedestrian access, trenching or soil excavation is to occur within the Tree Protection Zone without the written consent of the Responsible Authority. No storage or dumping of tools, equipment or waste is to occur within the Tree Protection Zone.***
8. ***Prior to the endorsement of plans and prior to any development commencing on the site (including demolition and excavation whether or not a planning permit is required), the owner/developer must enter into a Deed with the Responsible Authority and provide it with a bank guarantee of \$26,603 as security against a failure to protect the health of Tree 2 (Quercus robur - English Oak, \$21,085.00), Tree 3 (Quercus palustris – Pin Oak, \$2,759.00) and Tree 4 (Quercus palustris – Pin Oak, \$2,759.00) to be retained. The applicant must meet all costs associated with drafting and execution of the Deed, including those incurred by the responsible authority. Once a period of 12 months has lapsed following the completion of all works at the site the Responsible Authority may discharge the bank guarantee upon the written request of the obligor. At that time, the Responsible Authority will inspect the tree and, provided they have not been detrimentally affected, the bank guarantee will be discharged.***
9. ***Concurrent with the endorsement of plans or prior to the commencement of any works at the site (including demolition and excavation whether or not a planning permit is required), whichever occurs sooner, a letter of engagement must be provided to the Responsible Authority from the project arborist selected to oversee all relevant tree protection works. The project arborist must be an appropriately experienced and qualified professional (minimum Cert IV or equivalent in experience).***
10. ***The project arborist must maintain a log book detailing all site visits. The log book must be made available to the Responsible Authority within 24 hours of any request.***
11. ***Prior to the commencement of any works at the site (including demolition and excavation whether or not a planning permit is required), the project arborist must advise the Responsible Authority in writing that the Tree Protection Fences have been installed to their satisfaction.***
12. ***Concurrent with the endorsement of plans, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The Waste Management Plan must include:***
  - a) ***Dimensions of waste areas;***
  - b) ***The number of bins to be provided;***
  - c) ***Method of waste and recyclables collection;***
  - d) ***Hours of waste and recyclables collection ;***
  - e) ***Method of presentation of bins for waste collection;***
  - f) ***Sufficient headroom within the basement to allow the passage of waste collection vehicles (where applicable);***
  - g) ***Sufficient turning circles for the waste collection vehicles to drive out in forward gear from within the basement (where applicable);***
  - h) ***Strategies for how the generation of waste and recyclables from the development will be minimised.***

***When approved, the plan will be endorsed and will then form part of the permit. Waste collection from the development must be in accordance with the plan, to the satisfaction of the Responsible Authority.***

- 13. Concurrent with the endorsement of plans, a Sustainable Design Assessment (SDA) report must be submitted to and approved by the Responsible Authority. Upon approval the SDA report will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SDA to the satisfaction of the Responsible Authority. The SDA must be generally in accordance with the report prepared by F2 Design, Council date stamped 2 April 2020, updated in accordance with the memorandum prepared by F2 Design and development plans Council date stamped 4 September 2020 modified to:**
- a) Demonstrate how Best Practice measures from each of the 10 key Sustainable Design Categories of Stonnington Council's Sustainable Design Assessment in the Planning Process (SDAPP) have been addressed.**
  - b) Demonstrates how the policy objectives of Clause 22.18 are achieved, including details on plans of how each impervious area is treated, and that all toilets and the irrigation system are connected to the water tank.**
  - c) The following items included on the relevant development plans and within the SDA;**
    - i. Information is to be provided regarding the type, model and water efficiency of the proposed washing machines to be installed as part of the base building.**
    - ii. Confirmation is required from the project Landscape Architect that the proposed planting meet the BESS criteria for water efficient landscaping.**
    - iii. Preliminary NatHERS certificates are to be provided of each thermally unique dwelling to substantiate the figures entered into BESS and the commitment made, of an energy efficiency standard at least 10% above minimum NCC Compliance.**
    - iv. An annotation is to be included on the basement plan confirming the provision of Carbon Monoxide monitoring to the basement carpark.**
    - v. Information is to be provided regarding the type, model and energy efficiency of the proposed dryers to be installed as part of the base building.**
    - vi. Marked up floor plans and sections are to be provided detailing the horizontal and vertical sky angles entered into BESS as part of the daylight assessment.**
    - vii. Marked up floor plans detailing breeze paths are to be provided to substantiate the percentage entered into BESS, of apartment with effective natural ventilation.**
    - viii. Fixed external shading devices are to be provided to all north facing glazing of all habitable rooms to ensure that the north windows are shaded from the spring equinox till the autumn equinox (21**

**September to 21 March). Where sun shading devices are being utilised a dimensioned section diagram must be included to demonstrate their effectiveness.**

- ix. External operable sun shading devices are to be provided to all east and west facing glazing of habitable rooms, which could be in the form of operable louvres, sliding shutters or external blinds. The external shading devices are to be clearly shown/noted on the plans and elevations.**
- x. A dedicated secure bicycle parking area consisting of a minimum of five bicycle racks for residence and one visitor bicycle parking space are to be detailed on the plans including the bicycle rack type to be used.**
- xi. A notation is to be included on the plans confirming a tap and floor waste is to be provided on every balcony and courtyard.**
- xii. A notation is to be included on the plans confirming the proposed rainwater tanks total capacity and they are to be connected to all toilet and used for irrigation.**
- xiii. A notation is to be included on the roof plan confirming the area of 346m<sup>2</sup> is to drain to the rainwater tanks.**
- xiv. A brief statement outlining construction measures to prevent litter, sediments and pollution entering the stormwater system is to be provided. The statement should include the types of measures required to be implemented on site (such as adoption of 'Keeping our stormwater clean' guide by Melbourne Water and typical measures suggested).**

**All to the satisfaction of the Responsible Authority**

- 14. All works must be undertaken in accordance with the endorsed Sustainable Design Assessment to the satisfaction of the Responsible Authority. No alterations to the Sustainable Design Assessment may occur without written consent of the Responsible Authority.**
- 15. Prior to the occupation of the building, fixed privacy screens (not adhesive film) designed to limit overlooking as required by Standard B22 of Clause 55.04-6 in accordance with the endorsed plans must be installed to the satisfaction of the Responsible Authority and maintained to the satisfaction of the Responsible Authority thereafter for the life of the building.**
- 16. Prior to a building permit being issued, a report for the legal point of discharge must be obtained from Council and a drainage design for the development must be prepared by a suitably qualified Engineer in accordance with all 'recommendations' and requirements contained in that report. All drainage must be by means of a gravity based system with the exception of runoff from any basement ramp and agricultural drains which may be pumped. The relevant building surveyor must check and approve the drainage design and ensure that protection of the building is provided from a 1 in 100 A.R.I. rainfall event as required by the Building Regulations.**
- 17. Prior to an 'Occupancy Permit' being issued, a suitably qualified Engineer must carry out a detailed inspection of the completed stormwater drainage system**

***and associated works including all water storage tanks and detention (if applicable) to ensure that all works have been constructed in accordance with the approved design and the relevant planning permit conditions. Certification of the completed drainage from the Engineer must be provided to Council prior to a 'Statement of Compliance' being issued for the subdivision.***

- 18. The existing footpath levels must not be lowered or altered in any way at the property line (to facilitate the basement ramp). This is required to ensure that normal overland flow from the street is not able to enter the basement due to any lowering of the footpath at the property line.***
- 19. The redundant vehicular crossing must be removed and the footpath, nature strip and kerb reinstated at the owner's cost to the satisfaction of Council.***
- 20. The crossover must be constructed to Council's Standard Vehicle Crossover Guidelines unless otherwise approved by the Responsible Authority. Separate consent for crossovers is required from Council's Building and Local Law Unit.***
- 21. The applicant must at their cost provide a stormwater detention system to restrict runoff from the development to no greater than the existing runoff based on a 1 in 10 A.R.I. to the satisfaction of Council's Infrastructure Unit. Alternatively, in lieu of the stand-alone detention system, the owner may provide stormwater tanks that are in total 3,000 litres greater than those tanks required to satisfy WSUD requirements for the development. Those tanks must be connected to all toilets.***
- 22. Any poles, service pits or other structures/features on the footpath required to be relocated to facilitate the development must be done so at the cost of the owner/applicant and subject to the relevant authority's consent.***
- 23. All utility services to the subject land and buildings approved as part of this permit must be provided underground to the satisfaction of the Responsible Authority by completion of the development.***
- 24. All plant and equipment (including air-conditioning units) shall be located or screened so as not to be visible from any of the surrounding footpaths and adjoining properties (including from above) and shall be baffled so as to minimise the emission of unreasonable noise to the environment in accordance with Section 48A of the Environment Protection Act 1970 to the satisfaction of the Responsible Authority.***
- 25. Adequate provision must be made for the storage and collection of wastes and recyclables within the site prior to the commencement of use or occupation of the building. This area must be appropriately graded, drained and screened from public view to the satisfaction of the Responsible Authority.***
- 26. Prior to occupation, access for persons with disabilities must be provided in compliance with the Disability Discrimination Act 1992 and such access must be maintained at all times the building is occupied or in use.***
- 27. This permit will expire if one of the following circumstances applies:***
  - a) The development is not started within two years of the date of this permit.***
  - b) The development is not completed within four years of the date of this permit.***

***In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.***

**NOTES:**

**A. *This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained.***

**B. *Nothing in this permit hereby issued shall be construed to allow the removal of, damage to or pruning of a significant tree (including the roots) without the further written approval of Council.***

***"Significant tree" means a tree:***

**a) *with a trunk circumference of 180 centimetres or greater measured at its base; or***

**b) *with a trunk circumference of 140 centimetres or greater measured at 1.5 metres above its base; or***

**c) *listed on the Significant Tree Register.***

***Please contact the Council Arborists on 8290 1333 to ascertain if permission is required for tree removal or pruning or for further information and protection of trees during construction works.***

**C. *Nothing in the permit hereby issued may be construed to allow the removal of, damage to or pruning of any street tree without the further written consent of the Stonnington City Council. Contact the Council Arborists on 8290 1333 for further information.***

**D. *The owners and occupiers of the dwellings hereby approved are not eligible to receive "Resident Parking Permits".***

**E. *At the permit issue date, Section 69 of the Planning and Environment Act 1987 stated that the Responsible Authority may extend the periods referred to if a request is made in writing within the following timeframes:***

**i. *Before or within 6 months after the permit expiry date, where the development allowed by the permit has not yet started; and***

**ii. *Within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.***



## 14.2 Planning Application 0973/19 - 136-138 Darling Road, Malvern East

**Manager Statutory Planning: Alex Kastaniotis**

**Director Planning & Place: Stuart Driffin**

### Purpose of Report

For Council to consider a planning application for the construction of a multi-dwelling development in a General Residential Zone and Special Building Overlay at 136-138 Darling Road, Malvern East.

### Officer Recommendation Summary

That Council authorise Officers to issue a **Notice of Decision to Grant a Planning Permit** subject to conditions as outlined in the Officer Recommendation.

### Executive Summary

Applicant:	Castley McCrimmon Architects
Ward:	East
Zone:	General Residential Zone – Schedule 10
Overlay:	Special Building Overlay – Schedule 1
Neighbourhood Precinct:	Garden Suburban 4 Precinct
Date Lodged:	27 November 2019
Statutory Days: (as at Council Meeting date)	122
Trigger for Referral to Council:	Number of objections
Number of Objections:	11
Consultative Meeting:	Yes, held on 25 August 2020
Officer Recommendation	Notice of Decision to Grant a Planning Permit

### Background

#### The Proposal

The plans that form part of the basis of Council's consideration were prepared by Castley McCrimmon Architects and are known as File No. 1903, Drawing No.s TP01-TP12 (Rev A) and TP20-TP22 (Rev A), Council date stamped 27 May 2020 and Discussion Shadow Diagrams TP13-TP19 (Rev B) Council date stamped 13 October 2020.

Key features of the proposal are:

- Demolition of the existing dwelling on site (no planning permit required).
- Construction of four dwellings on the site in a linear arrangement.
- Dwellings 1 and 4 are double storey, and comprise the following:
  - An open plan kitchen/living and dining area at ground floor level.
  - A study and powder room at ground level.

- Four bedrooms, two bathrooms at first floor level.
- Secluded private open space to Dwelling 1 is proposed on the west and southern sides of the site.
- Secluded private open space to Dwelling 4 is proposed on the northern side of the site.
- Dwellings 2 and 3 are three storey, and comprise the following:
  - Master bedroom and ensuite and ground level.
  - Open plan kitchen/living and dining area at first floor level with study nook, powder room and north-facing balconies.
  - Additional two bedrooms and one bathroom at second floor level and adjacent terrace area.
- Double car garage is proposed to each dwelling.
- Vehicle access to Dwellings 1, 2 and 3 are proposed from a 3.1 metre wide right-of-way adjoining the site to the north. Vehicle access to Dwelling 4 is proposed from a 3-metre wide right-of-way adjoining the site to the east.
- Pedestrian access to all dwellings is proposed via a pedestrian path along the southern side of the site.
- The maximum overall building height is 9.7 metres above natural ground level.
- The dwellings are of contemporary architectural style with a flat roof form and materials comprising of brickwork, smooth and textured render, and timber cladding with metal features.

### Site and Surrounds

The site is located on the eastern side of Darling Road approximately 194 metres south of the intersection with Malvern Road. The site has the following significant characteristics:

- The site is a rectangular shape lot, with the exception of a splay on the northeast corner of the site.
- The site has a 19.8 metre frontage to Darling Road, a side length of 34.4 metres on the north side and 35.9 metres on the south side, yielding a total site area of approximately 711 square metres.
- A right-of-way bounds the northern and eastern boundaries of the site with access via Darling Road through to Ailsa Avenue.
- The land is developed with a single storey brick dwelling with a tiled roof and two brick garages.
- Vehicle access is provided to the site via a crossover from Darling Road to a brick garage located in the south-east corner of the site. Secondary vehicle access is provided from the right-of-way to the north to a single garage and carport on the north-east corner of the site.

The wider area exhibits varied built forms and is experiencing increased density, particularly along Malvern Road and also to the north-west and northern side of the subject site.

Directly to the north of the subject site, beyond the right-of-way, are a number of commercial buildings, predominately built boundary to boundary at No.140-144 Darling Road. These commercial buildings vary between single and double storey built form with the exception of a three-storey residential apartment building located at No.146 Darling Road.

The adjoining properties to the south of the subject site are No. 134 Darling Road and No. 1A Ailsa Avenue, both of which house single storey dwellings.

To the east of the subject site is Nos 1 – 3 Ailsa Avenue, a unit development comprising 10 separate units. Units 1, 2 and 3 are within closest proximity to the subject site.

To the west of the subject site, across from Darling Road is Dairy Park. Also to the west of the subject site, across from Darling Road and north of Paxton Street is No. 153-155 Darling Road. The site is occupied by a single storey rendered brick dwelling with tile roof.

#### Previous Planning Application/s

A search of Council records indicates the following relevant planning applications pertaining to the site;

- Planning Permit No. 687/06 issued on 17 October 2006 and allowed for 'Works to a dwelling within the Special Building Overlay'.

#### The Title

The site is described on Certificate of Title Volume 05495 Folio 804, Volume 05520 Folio 867, Volume 05520 Folio 866, and Lots 1, 2 & 3 on Plan of Subdivision 008409. No covenants or easements affect the land.

#### Planning Controls

The following controls/permit triggers are considerations for this application:

##### Zone

##### *Clause 32.08 – General Residential Zone – Schedule 10*

Pursuant to Clause 32.08-6 a permit is required to construct two or more dwellings on a lot.

Pursuant to Clause 32.08-4 the lot must provide a minimum Garden Area of 35%. The subject site has a total garden area of 249 square metres (35%) and therefore complies with the garden area requirement.

Schedule 10 (Point 3.0) of the Zone specifies that a building used as a dwelling must not exceed a height of 9 metres.

Schedule 10 also stipulates that in areas subject to the Special Building Overlay, the maximum building height may be exceeded by no more than the minimum additional building height required by the Overlay provisions. In this instance, the Overlay requires the building to be constructed 300mm above the applicable flood level, which is 700mm above natural ground level. The building has been designed at 9.7 metres, which is 9 metres above the applicable flood level, and therefore complies with the maximum height limit.

Schedule 10 modifies the following Standards of Clause 55:

	<b>Standard</b>	<b>Requirement</b>
Site coverage	B8	Basements should not exceed 75% of the site area.
Landscaping	B13	In addition to the requirements of B13, at least one canopy tree should be planted on the site.
Side and rear setbacks	B17	For a distance of at least 5 metres behind the front façade of the building fronting the street, setback new buildings (including basements) a minimum of 2 metres from at least one side boundary and at least 1 metre from the other side boundary up to 3.6 metres in height. Where no setback is specified, standard B17 applies.
Walls on boundary	B18	Walls should not be located on side boundaries for a distance of 5 metres behind the front façade of the building fronting the street.

### Overlay

#### *Clause 44.05 – Special Building Overlay – Schedule 1*

Pursuant to Clause 44.05-2, a permit is required to construct a building or construct or carry out works.

### Particular Provisions

#### *Clause 52.06 – Car Parking*

Pursuant to Clause 52.06-2, the car parking spaces required under Clause 52.06-5 must be provided on the land prior to the commencement of a new use.

Pursuant to Clause 52.06-5, a dwelling requires:

- 1 car space to each one or two bedroom dwelling;
- 2 car spaces to each three or more bedroom dwelling.

The proposal provides eight car spaces, with 2 spaces allocated to each dwelling. This complies with the statutory requirement.

#### *Clause 55 – Two or more Dwellings on a lot and Residential Buildings*

A development:

- Must meet all of the objectives of this clause.
- Should meet all of the standards of this clause.

### Relevant Planning Policies

Clause 15	Built Environment and Heritage
Clause 16.01	Residential Development
Clause 21.03	Vision
Clause 21.05	Housing
Clause 21.06	Built Environment and Heritage
Clause 21.08	Infrastructure
Clause 22.05	Environmentally Sustainable Development
Clause 22.18	Stormwater Management (Water Sensitive Urban Design) Policy
Clause 22.23	Neighbourhood Character Policy
Clause 53.18	Stormwater management in Urban Development
Clause 65	Decision Guidelines

### Advertising

The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987 by sending notices to the owners and occupiers of adjoining land and by placing three signs on the site. The public notification of the application has been completed satisfactorily.

The site is located in East Ward and objections from eleven (11) different properties have been received. The objections are summarized as follows:

- Car Parking and Traffic
- Overshadowing
- Overlooking
- Access and safety
- Overdevelopment
- Neighbourhood Character
- Street Setback

- Side and rear setbacks
- Privatisation of the right-of-way.

A Consultative Meeting was held on 25 August 2020. The meeting was attended by Councillors Atwell, Davis and Klisaris, representatives of the applicant, objectors and Council planning officers. The meeting did not result in any changes to the plans.

## Referrals

### *Parks*

Council's Arborist reviewed the Arboricultural Report submitted on 27 November 2019. No objection was raised, subject to the following conditions:

- Protection fencing must be afforded to the *Pyrus Calleryana* (Callery Pear) street tree at this location prior to construction works occurring. Fencing must comply with Section 4 of AS 4970 and form a 2m x 2m protection zone around the tree.
- A retention bond is required for the *Pyrus Calleryana* (Callery Pear) street tree.
- No vehicular or pedestrian access, trenching or soil excavation is to occur within the tree protection zone without the written consent of the Responsible Authority. No storage or dumping of tools, equipment or waste is to occur within the tree protection zone.

### *Urban Design*

Council's Urban Designer has reviewed the Advertised Material. No objection was raised to the proposal subject to a revised landscape plan being submitted to include more suitable planting (7m – 8m canopy trees) within the frontage, rear and southern setbacks.

### *Infrastructure*

Council's Infrastructure Department reviewed the Advertised Material on 3 July 2020. No objection was made to the proposal, subject to conditions relating to stormwater detention system, legal point of discharge, redundant crossover to be reinstated and the right-of-way to be constructed/paved at least for the length of the right-of-way abutting the northern boundary.

### *Waste*

Council's Waste Management Department reviewed the Advertised Material on 11 July 2020. No objection was raised to the proposal, subject to conditions:

### *Transport and Parking*

Council's Traffic Engineers reviewed the Advertised Material and additional swept paths submitted to Council on 21 August 2020. The following key comments were made in relation to the proposal (summarised):

- The traffic impact of this development, is anticipated to be negligible.
- Elevations of the garages have included a headroom clearance of 2.3 metres (min) for each garage, when the garage door is in an open position. This is satisfactory.
- Each garage is proposed with separate access off the Right-of-Way (RoW). While there isn't a footpath in this location, the RoW is narrow and therefore sufficient sight lines would be required for vehicles to observe other vehicles in the RoW. Provision of appropriate sight lines is critical for the safety of future users.
- The sightline distance for the garage of Townhouse 1 would be slightly obscured due to the location of planting. Notwithstanding a height of 900mm for planting is proposed and is supported.

- A splay is also proposed on the south side of the RoW at the Darling Road access point. This splay meets the requirements and the vegetation proposed within the splay would be limited to 900mm in height. It would be preferred if no vegetation was planted in this section.
- The applicant has provided a B99 swept path diagram showing a B99 vehicle exiting the property whilst a smaller vehicle (B85) is parked in the garage. These swept path diagrams can be accepted.
- Each garage is proposed to have one bicycle space at the rear of the garage. The rack is proposed to be a vertical rack which reduces the impact to the parking spaces within the garage. The inclusion of a bike rack at this location is to be managed privately.
- The redundant crossing along Darling Road is to be removed and returned to kerb and channel, to the satisfaction of Council's Liveability and Compliance Unit.
- The RoW widening will remain private property. The proposed arrangement may raise concerns in terms of ongoing road maintenance, as public roads are generally maintained by Council.

#### *Environmentally Sustainable Design (ESD):*

Council's ESD officer reviewed the development plans and the Sustainable Management Plan and are generally supportive of the proposal subject to conditions.

#### *Melbourne Water*

Melbourne Water reviewed the advertised material and are generally supportive of the application subject to conditions being included on the permit.

## **Key Issues and Discussion**

### **Strategic Justification**

The overarching policies and objectives at both State and Local level encourage urban consolidation in established urban areas and medium-density residential development in and around activity centres, where it is close to public transport. These strategies call for well-designed medium-density development that respects neighbourhood character, improved housing choice, makes better use of existing infrastructure and improves energy efficiency.

Council's Local Policy on the location of residential development at clause 21.05-2 seeks to maintain a clear distinction between the type of development outcome in locations for higher density development and the lower density residential hinterland. The policy also seeks to achieve this by classifying different residential areas into three categories: Substantial, Incremental and Minimal Change areas. The subject land is located within an Incremental Change area. These areas (outside of the Heritage Overlay and Neighbourhood Character Overlay), are encouraged to direct multi-unit development (2-3 storeys) to lots capable of accommodating increased density.

The subject site is approximately 711 square metres in area and is within the Principal Public Transport Network Area, being 600m north from an activity centre and 200m south of a smaller commercial area and serviced by various modes of public transport. The proximity of the site to public transport and activity centres suggests that the land is capable of accommodating increased density. Furthermore, the design represents an appropriate infill response and is appropriately integrated within the Darling Road streetscape and the sensitive residential uses surrounding the site.

### **Neighbourhood Character**

The site is located within the Garden Suburban 4 (GS4) Neighbourhood Character precinct as defined by Council's Local Neighbourhood Character Policy at Clause 22.23. The relevant section of the statement of preferred character for this precinct is as follows:

*The Garden Suburban 4 (GS4) precinct comprises spacious and leafy streetscapes with Edwardian, Interwar or Post-war era and new buildings set in established garden surrounds. Regular front and side setbacks provide space around buildings and allow for canopy trees. New buildings or additions offer innovative and contemporary design responses while complementing the key aspects of built form, scale and design detail of the older dwellings in the precinct. Low or permeable front fences retain views to gardens and buildings from the street. Areas within a Residential Growth or Mixed Use Zone or within a substantial change area will accommodate more development with a more compact setting but with space for canopy trees and other vegetation and high quality, responsive design.*

The following relevant design objectives apply:

- *To encourage the retention of intact, older dwellings that contribute to the character of the area.*
- *To ensure new buildings and extensions do not dominate the streetscape.*
- *To encourage a high quality of buildings detailing that references, without mimicking, the detail of buildings in the area.*
- *To maintain and reinforce the rhythm of spacing between and around buildings,*
- *To maintain and strengthen the garden settings of buildings and the tree canopy of the neighbourhood.*
- *To prevent the loss of front garden space and the dominance of car parking structure.*
- *To ensure fences complement the predominant style of front boundary treatment in the street and retain views to dwellings and gardens.*

The proposal is a contemporary design response, presenting largely as a double storey building across the site, with a recessive centrally located third level. Landscaping is proposed around the front, sides and rear of the new building.

The architectural form is innovative and incorporates a pronounced ground and first floor of smooth render in warm grey, elements of both brick in grey tones and natural grey timber, integrating with the light-coloured dwellings to the south and east of the subject site. Adequate front and side setbacks have been provided to allow for the establishment of canopy trees to soften the built form in the streetscape.

The development proposes to reinstate the existing crossover from Darling Road, as car parking is provided at grade with access from the right-of-ways adjoining the site to the north and the east. Positively, this outcome removes the need for any visible garage structures to Darling Road and increasing opportunities for landscaping within the front setback.

Relocation of vehicular access to the side and rear rights-of-way ensures that there are no visible garage structures to Darling Road thereby increasing opportunities for additional landscaping within the front setback area as well as enabling additional on-street car parking.

The proposal is not considered to dominate the streetscape as the third storey element is setback from the street frontage a distance of 12.88 metres from Darling Road (west). These setbacks ensure that the third storey component is suitably recessed.

The front fence is proposed at a height of 1.8 metres from natural ground level and is to be constructed of timber battens, allowing views to the gardens and dwelling beyond.

The proposal for a contemporary building set amongst canopy trees and soft landscaping reflects the garden character of the wider neighbourhood and will provide a transition in scale between the residential and commercial properties interfacing the site.

The development is deemed to be compatible with the surrounding built form and meets the objectives of the Garden Suburban 4 (GS4) Neighbourhood Character Precinct.

### Site Layout and Building Massing

The application has been assessed against the provisions of Clause 55 (ResCode) and the modified standards specified in the schedule to the zone. The development achieves a high level of compliance and the following key standards are highlighted and discussed below.

#### *Street Setback*

The subject site is located on the corner of Darling Road and unnamed right-of-way to the north and the east. On the south side of the site is a single storey dwelling at No. 134 Darling Road, offering a setback of 7.3 metres from the street. On the north side of the site is No. 140-144 Darling Road, a commercial property, constructed to the property boundary.

Standard B6 of Clause 55 outlines the preferred street setback at different development contexts. While the site abuts a right-of-way to the north, it is not considered a 'corner site' under this standard as this is typically applied to sites with wider side streets and not to rights-of-way.

The minimum required setback under Standard B6 is the average distance of the setbacks of the existing buildings on the abutting allotments fronting the street. The recommended setback for the development therefore is 3.75 metres. A setback between 4 – 4.5 metres is proposed from Darling Road, which results in compliance with Standard B6. It is also considered that the proposed setback provides a suitable transition between the residential properties to the south, which have a greater street setback, and the robust commercial built form to the north.

#### *Building Height*

As noted earlier, the maximum building height is 9 metres from the applicable flood level, 9.7 metres from natural ground level, and complies with the building height requirements of ResCode.

It is acknowledged that this proposal will result in the introduction of three storey built form for the central section of the development and the immediate surrounds consists of predominantly single or two storey built form. While a three-storey built form is proposed to Dwellings 2 and 3, it is important to note that the floor to ceiling heights of these dwelling are lower than the double-storey dwellings, and therefore the third floor projects only 1.44 metres above the double-storey built form of Dwellings 1 and 4. Further, the proposed third storey is setback in excess of 12 metres from Darling Road, and 10 metres from the right-of-way to the east. These setbacks are considered reasonable and appropriate to the site forming an acceptable transition in the scale and height of buildings having regard to the built form character surrounding the site.

#### *Site Coverage and Permeability*

The proposal complies with the site coverage and permeability recommendations of Standard B8 (Site coverage) that seeks maximum 60% site coverage and Standard B9 (Permeability objective) which recommends a minimum 20% permeability. The development proposes the following:

- Site Coverage : 58%



- Permeability: 30%

The proposed 249 square metres of garden area achieves the minimum area set by the Zone, which requires 248 square metres or 35%. The setbacks and building footprint will provide satisfactory opportunities for landscaping.

It should be noted that the site coverage stipulated on the plans indicates 63%. It is noted that this calculation is incorrect as it includes areas such as driveways which are not included in this calculation.

Council Officers have conducted their own calculation of site coverage and determined the proposal achieves 58% coverage which complies with the requirement of Standard B8 of ResCode.

#### *Landscaping*

Council's Municipal Strategic Statement and various local policies emphasise the provision of high-quality landscaping and seek to ensure that landscaping forms a key consideration of development proposals. Clause 21.06-2 (Landscape Character) seeks to 'repair and reinforce the high-quality landscape character of the City'.

Further, Clause 22.23 – Neighbourhood Character Policy seeks to 'maintain and strengthen the garden settings of buildings and the tree canopy of the neighbourhood'. The policy further encourages a design response which 'includes planting around the perimeter of the site to strengthen the garden setting'.

The subject site currently includes four trees within the rear setback area, one street tree along Darling Road and a mix of shrubs throughout the site. Two Bracelet Honey-myrtle trees (Trees 2 and 3) located in the rear setback area on the central lawn are deemed 'significant' under Council's Local Laws. Council's Arborist has not objected to the removal of these significant trees due to their poor structure, nearing the end of their useful life expectancy and they do not contribute to the wider landscape of the area.

Although all trees on the site are mature, the arboricultural assessment has identified all trees as having low arboricultural value, largely based on the limited amenity they provide. Further, no site trees are considered to be of a high enough standard to warrant altering the development to ensure their retention. Council's Arborist has reviewed the submitted arboricultural assessment and is not opposed to the removal of any trees from the site.

While the proposal seeks to clear the site of existing vegetation, the landscape design proposes a significant increase in vegetation with perimeter planting, mature canopy trees and low level planting. The canopy trees identified in the submitted plant schedule range in height from 3 – 4 metres. Council's Urban Designer has advised larger tree stocks are required to be installed within the frontage, rear and southern setbacks, and the landscape plan should be revised accordingly. This will form a condition of any approval granted.

Council's Arborist has requested that the street tree along Darling Road be protected during construction with tree protection fencing. Further Council's Arborist has deemed the street tree worthy of a retention bond. These recommendations will be included on the permit to issue.

#### *Access*

The proposal seeks to remove the existing crossover from Darling Road with vehicle access provided to the development from two right-of-ways adjoining the site to the north and east. The proposed access arrangements will provide safe and convenient parking for future residents of the building.

Objectors have raised concerns with regards to the proposed access from the right-of-way and whether this is appropriate for vehicles to enter and exit the site. The right-of-way to the north, as determined by the survey plan is 3.1 metres in width. This is considered an appropriate width from an access perspective. Further, the proposal offers an additional 2 metre setback from the northern property boundary to the garage door, enabling sufficient area for vehicles to enter and exit the site. The right-of-way to the east is 3 metres in width, and a further 2.6 metres setback from the property boundary to the garage of Dwelling 4 is proposed, allowing adequate ingress and egress manoeuvres.

Council’s Traffic Engineers have reviewed the plans and have no objection to the proposed vehicular access arrangements.

**Amenity Impacts**

*Side and rear setbacks*

Standard B17 sets out numerical requirements for side and rear setbacks. The proposal has been designed with adequate setbacks from the side and rear boundaries to protect the adjoining residential amenity. The tables below illustrate how the proposal meets these requirements.

Southern Elevation

<b>Southern setback</b>	<b>Wall height</b>	<b>Minimum proposed setbacks</b>	<b>Setbacks required by Standard B17</b>	<b>Complies?</b>
<b>Ground Floor (Dwellings 1, 2 &amp; 3)</b>	4.9 metres	4.5 metres	1.39 metres	Yes
<b>Ground Floor (Dwelling 4)</b>	3.1 metres	1 metre	1 metre	Yes
<b>First Floor (Dwelling 1)</b>	8 metres	4.5 metres	3.09 metres	Yes
<b>First Floor (Dwellings 2 &amp; 3)</b>	6.5 metres	4.8 metres	1.87 metres	Yes
<b>First Floor (Dwelling 4)</b>	7.99 metres	2.5 metres	3.08 metres	No
<b>Second Floor (Dwellings 2 &amp; 3) – planter box</b>	8.1 metres	4.8 metres	4.18 metres	Yes
<b>Second Floor (Dwellings 2 &amp; 3) – staircase and building</b>	9.6 metres	7.4 – 9.8 metres	5.68 metres	Yes

As evidenced by the table above, the setbacks proposed to the southern boundary generally comply and in a number of instances go beyond the requirements of Standard B17. The exception however is Dwelling 4 at first floor level. The proposal provides a setback of 2.5 metres from the southern boundary, and does not comply with the required 3.08 metre setback. The double storey built form of the master suite will present as visually bulky and is considered to impact on the amenity of No. 134 Darling Road and No. 1A Ailsa Avenue secluded private open space. Given these are the main open space areas, the proposal should be sympathetic of the existing conditions. A condition will be placed on any permit to

issue, requiring the master suite of Dwelling 4 to be setback off the southern property boundary in accordance with Standard B17 of ResCode.

Eastern Elevation

Eastern setback	Wall height	Minimum proposed setbacks	Setbacks required by Standard B17	Complies?
<b>Ground Floor (Dwelling 4)</b>	4.5 metres	2 metres to the lane	1.27 metres	Yes
<b>First Floor (Dwelling 4)</b>	7.99 – 8.33 metres	2 metres to the lane	2.99 – 3.42 metres	No

While the proposal does not technically comply with the setback requirement of Standard B17, it should be noted that the site directly adjoins a right-of-way to the east. The right-of-way offers an additional 3 metre separation from the proposed development to the units at No. 1-3 Ailsa Avenue. Given no unreasonable amenity impacts are proposed to the adjoining properties as a result of this variation, the development is considered to comply with the Side and Rear Setbacks Objective.

The proposal also requires a variation to the side and rear setbacks along the northern elevation. While the setbacks along this interface are reduced, the site adjoins a right of way along the northern boundary. Beyond the right-of-way, the site adjoins a double-storey brick wall. Given this is not a sensitive interface and the variation will not adversely impact the commercial building to the north, a variation is considered reasonable and appropriate in this instance.

*Daylight to Existing Windows*

Units 1 & 2 / 1-3 Ailsa Avenue, beyond the right-of-way, include a number of west-facing habitable room windows which interface the development and are subject to consideration of Standard B19 – Daylight to existing windows. The proposal includes a maximum building height of 8.3 metres along the eastern elevation. Pursuant to the Standard, a maximum separation of 4.15 metres is required from the edge of the building to the existing windows. It is noted that a total separation distance of 7.1 metres is proposed from the first floor of the development to the habitable room windows at No. 1-3 Ailsa Avenue. All habitable room windows to the east are provided with adequate daylight access.

*North-facing windows*

The subject site interfaces with 3 north-facing habitable room windows at No. 134 Darling Road. These habitable room windows are located 2.7 metres from the shared property boundary. Dwellings 1, 2 and 3 will be assessed against the north-facing window standard. Dwelling 4 is not included in the assessment as it is not proposed to be located opposite neighbouring north facing windows. The proposal provides the following setbacks in response to Standard B20.

Northern setback	Wall height	Minimum proposed setbacks	Setbacks required by Standard B20	Complies?
<b>First Floor (Dwellings 1, 2 &amp; 3)</b>	6.5 metres	4.5 – 4.8 metres	2.74 metres	Yes

<b>Second Floor (Dwellings 2 &amp; 3) – planter box</b>	8.1 metres	4.8 metres	4.18 metres	Yes
<b>Second Flood (Dwellings 2 &amp; 3) – staircase and building</b>	9.6 metres	7.4 – 9.8 metres	5.68 metres	Yes

The proposal therefore complies with Standard B20 and is considered acceptable with regard to impacts on neighbouring north facing windows.

*Overshadowing open space*

Standard B21 seeks to ensure buildings do not significantly overshadow the secluded private open space of abutting properties. Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimensions of 3 metres, whichever is the lesser, of secluded private open space should receive at least five (5) hours of sunlight between 9am and 3pm at the September Equinox.

An analysis of the proposed overshadowing to No. 1A Ailsa Avenue is provided as follows:

<b>9am</b>	No additional overshadowing
<b>10am</b>	No additional overshadowing
<b>11am</b>	1.3sqm of additional shadow, with 54.48sqm of POS remaining unshadowed
<b>12pm</b>	5.8sqm of additional shadow, with 60.1sqm of POS remaining unshadowed
<b>1pm</b>	9.7sqm of additional shadow, with 48.7sqm of POS remaining unshadowed
<b>2pm</b>	8.2sqm of additional shadow, with 38.9sqm of POS remaining unshadowed (1.02sqm variation, equating to 0.01%)
<b>3pm</b>	5.5sqm of additional shadow, with 31.1sqm of POS remaining unshadowed

The existing private open space at No. 1A Ailsa Avenue will receive 4 hours of solar access in accordance with Standard B21, from 9am to 1pm. A variation is currently being sought to this standard at 2pm of 1.02 square metres (0.01% of the secluded private open space area).

For reasons outlined earlier, the south facing first floor wall is recommended to be setback to comply with Standard B17. This setback will allow further decreasing of shadow impacts to the south. With the additional setback, the proposal will result in approximately 41 square metres of unshadowed secluded private open space at 2pm and therefore will comply with the requirements of the Standard.

With the recommended setback to the south-facing first floor wall of Dwelling 4, the proposed overshadowing analysis to No. 134 Darling Road, is provided as follows:

<b>9am</b>	0.1sqm of additional shadow, with 31.7sqm of POS remaining unshadowed
<b>10am</b>	3sqm of additional shadow, with 34sqm of POS remaining unshadowed
<b>11am</b>	4sqm of additional shadow, with 38.2sqm of POS remaining unshadowed
<b>12pm</b>	5.2sqm of additional shadow, with 37sqm of POS remaining unshadowed

<b>1pm</b>	3.1sqm of additional shadow, with 34.8sqm of POS remaining unshadowed
<b>2pm</b>	0.2sqm of additional shadow, with 30.9sqm of POS remaining unshadowed
<b>3pm</b>	0.1sqm of additional shadow, with 23sqm of POS remaining unshadowed

The existing overshadowing at No. 134 Darling Road currently does not comply at 9am, 10am, 1pm, 2pm and 3pm. Standard B21 stipulates that if existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.

Given the orientation of the lot, the additional shadow cast is not considered to compromise the quality of the private open space area. The depth of the unshadowed area within the main open space area remains at least 4 metres throughout the day. The existing use of the open space will not be adversely affected as the area in which the additional shadow lies is between an existing garage and a garden shed. The area free of shadow is more centralised and located closer to the dwelling which is adjacent to the main living spaces. Given the depth and area of useable unshadowed private open space, it is considered that a balance is achieved with the additional setback recommended earlier in this report. While not fully satisfying the numerical standards of Standard B21, the extent of overshadowing to No. 134 Darling Road will not have a significant impact on the use of the respective open space areas and as such is considered acceptable. The proposal is considered to comply with the objective of the standard which seeks to ensure that buildings do not significantly overshadow the existing private open space areas.

The additional shadow proposed to the eastern properties, is wholly contained within the existing fence shadows of 1-3 Ailsa Avenue and, as such, the proposal complies with the requirements and objectives of Standard B21.

#### *Overlooking*

The key assessment tool to determine unreasonable overlooking is Standard B22. The standard provides a 9 metre, 45 degree angle that development proposals should satisfy, with any windows or balconies located outside the aforementioned arc to be screened to a height of 1.7 metres above finished floor level.

The proposal includes habitable room windows and areas of secluded private open space at first and second floor levels, which have the potential to overlook neighbouring habitable room windows and areas of secluded private open space within a 9 metre radius to the north, east and southern sides of the site.

At ground floor level, there is no potential for direct overlooking into neighbouring properties.

The western side of the proposal at first floor level has not been provided with any measures to limit overlooking as it fronts Darling Road and there are no sensitive interfaces along this elevation. Similarly, the balconies on the northern side of Dwellings 2 and 3 have not been provided with any measures to limit overlooking as they abut the right-of-way, opposite a brick wall. It is noted that the overlooking arc from the balcony of Dwelling 3 clips the edge of the secluded private open space of unit 3/1-3 Ailsa Avenue. Given the location of the brick wall, the extent of overlooking from this balcony is not considered to be unreasonable.

No overlooking measures are proposed to the two north-facing bedrooms of Dwelling 4. The 9-metre overlooking arc covers the south-western portion secluded private open space of Unit 3/1-3 Ailsa Avenue. While the submitted plans indicate that views from the bedrooms will be obstructed due to the depth of the planter box and the dividing boundary fence, it is noted that the 9-metre overlooking arc intersects with the ground at 3/1-3 Ailsa Avenue,

rather than 1.7 metres above ground level. It is considered that additional overlooking measures will be required to Bedroom 3 to limit unreasonable views. This will be addressed by way of conditions on any permit to issue.

At first floor level, Dwelling 4 proposes fixed privacy screens with a maximum of 25 per cent transparency to bedroom 2 and the master bedroom located on the eastern side. A condition will be included on any permit that issues requiring additional details of the proposed screening devices in accordance with Standard B22.

Along the southern side of the development at first floor, the master bedroom of Dwelling 4 includes a privacy screen to limit overlooking to 134 Darling Road and 1A Ailsa Avenue. A condition will be included on any permit that issues requiring additional details of the screening devices in accordance with Standard B22. No overlooking measures are proposed to the west-facing window of Dwelling 4. It is noted that views will be limited into 134 Darling Road as the existing garage located on the boundary will obstruct views beyond.

Dwellings 2 and 3 are provided with highlight windows to 1.5 metres above internal floor level along the southern side. Views from the south facing dining areas of Dwellings 2 and 3 are obscured given the location of the study nook. The proposed dwellings interface habitable room windows and the secluded private open space areas of 134 Darling Road and 1A Ailsa Avenue. A condition is recommended on any permit to issue requiring additional sight line diagrams demonstrating compliance with Standard B22, or increasing the sill height of the south facing windows to 1.7 metres above internal floor level.

At second floor, Dwellings 2 and 3 propose 1.7 metre high walls along the western, southern and eastern sides of the terrace to limit overlooking. This complies with standard B22.

#### On-site Amenity and Facilities

The amenity of the new dwellings is deemed to be of an acceptable standard and complies with the Objectives of Clause 55.05.

Dwellings 1 and 4 are provided with in excess of 40 square metres of private open space at ground floor level, with areas of secluded private open space in excess of 25 square metres. Dwellings 2 and 3 are provided with ground floor areas of private open space, first floor balconies of approximately 12 square metres and second floor terrace in excess of 20 square metres. The proposal therefore complies with the provisions of Standard B28 – private open space.

The dwellings are provided with adequate access to natural light and ventilation.

A minimum of 6 cubic metres of externally accessible and secure storage space are accommodated within the garages of each dwelling, thereby complying with Standard B30.

The proposal includes a front fence along the Darling Road frontage. The height of the proposed front fence is 1.3 metres above the Melbourne Water flood level and 2.1 metres above natural ground level. While the height of the proposed front fence exceeds the 1.5 metre height recommended by Standard B32, it is considered acceptable in this instance given the nature of Darling Road and the predominance of high front fencing in the street. Further the front fence incorporates a high level of permeability and will maintain views to the front garden of Dwelling 1.

On balance, the proposal is considered to offer acceptable accommodation for future occupants.

#### Special Building Overlay

The entire site is impacted by the Special Building Overlay (SBO). The relevant authority for the Special Building Overlay is Melbourne Water. Both Melbourne Water and Council's Infrastructure Unit have reviewed the proposal and provided their general support for the development subject to the conditions outlined in the referral section of the report. Importantly, no fundamental changes to the buildings are required as a result of these conditions.

### Car Parking and Traffic

#### *Car Parking Provision*

Each dwelling provides 2 car parking spaces within a garage. This meets the statutory rate and complies with the requirements of Clause 52.06 of the Stonnington Planning Scheme.

The development proposes a 2.3 metre headroom clearance for each garage when the garage door is in an open position and this is considered satisfactory.

A swept path diagram demonstrating that a B99 vehicle exiting the property whilst a smaller B85 vehicle is parked in the garage has been submitted, reviewed by Council's Traffic Engineers and is considered acceptable.

The plans also clearly show visual splays on the southern side of the right-of-way. This sight line will ensure that visibility is clear between vehicles exiting the site.

#### *Car Parking Design*

The development includes a setback from the right-of-ways for the garaging which extends the available apron width. The proposed garages along the north are setback a total of 2.4 metres and 2.6 metres on the eastern side. Objectors have raised concerns as to whether the right-of-way will be privatised as a result of this development. While the development proposes access from the two right-of-ways, it does not propose the privatisation of the lane. The right-of-way widening will be contained within the boundaries of the site. The remainder of the right-of-ways will still be able to be utilised by the public and it will remain Council land.

The car park design meets the relevant design standards of Clause 52.06. Although some of the swept paths suggest corrective manoeuvres are required to ingress and egress from the garages, this is considered reasonable, as this should not impact on the traffic flow of the right-of-way due to the size and low traffic volumes in the right-of-ways.

#### *Vehicle Crossings*

The existing vehicle crossing on Darling Road is proposed to be removed. A condition on any permit issued will require the redundant crossing to be removed and returned to kerb and channel to the satisfaction of Council.

A concern raised by the Transport and Parking Department relates to the widening of the right-of-way to the north, as the additional width is provided within the subject site. Given the design, the additional width would be available for use by all traffic/vehicles accessing the right-of-way, including traffic not associated with the development. Further concern was raised with regards to the ongoing road maintenance, consistency of design and liability implications. To address the above concerns, a condition requiring the owner of the land to enter into an agreement with the Responsible Authority under section 173 of the Planning and Environment Act 1987, will be placed on any permit to issue. The agreement will seek to allow free and unimpeded public access over the land between the external face of the ground floor garages and the north boundary, and the land between the external face of the ground floor garage and the east boundary. It will also indemnify Council for any damages to the development and maintain public liability insurance for the use of the public access land.

## Sustainable Design Assessment

Pursuant to Clause 22.05 Environmentally Sustainable Development, a proposal of this scale is required to be accompanied by a Sustainable Design Assessment (SDA). Further, the policy at Clause 22.18 details the requirement for any new buildings or extensions to existing buildings which are 50 square metres in floor area of greater, to submit to Council a water sensitive urban design response which details stormwater treatment measures.

The applicant has submitted a Sustainable Design Assessment (SDA), detailing how the development addresses the 10 key sustainable design categories using the Built Environment Sustainability Scorecard (BESS). The submitted SDA shows that the development achieves a BESS score of 56% and a pass for the mandatory categories of Water, Energy, Stormwater and IEQ, which is satisfactory. Council's ESD Officer has reviewed the reports submitted by the applicant and requested several changes be made to it, as well some additional notations on the plans. These will be required as a condition of any permit to issue.

## Objections

All matters raised by objectors have been discussed in the body of this report.

## Conclusion

Having assessed the application against the relevant planning controls, it is recommended that the proposal be supported for the following reasons:

- The proposal achieves an appropriate built form outcome and building height for an incremental change area in accordance with Council's local policies and respects the surrounding neighbourhood character.
- The proposal does not unreasonably impact on the amenity of adjacent or nearby sites and complies with the objectives of Clause 55 of the Stonnington Planning Scheme.
- The development provides the full provision of car parking in accordance with the statutory requirement.

## Governance Compliance

### Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

### Human Rights Consideration

This application has been assessed in accordance with the requirements of the Planning and Environment Act 1987 (including the Stonnington Planning Scheme), reviewed by the State Government and which complies with the Charter of Human Rights & Responsibilities Act 2006.

## Attachments

1. 0973/19 - 136-138 Darling Road, Malvern East [14.2.1 - 28 pages]

## Officer Recommendation

***That Council AUTHORISE Officers to issue a Notice of Decision to Grant a Planning Permit No: 973/19 for the land located at 136-138 Darling Road, Malvern East under the Stonnington Planning Scheme for Construction of a multi-dwelling development***



**in a General Residential Zone and Special Building Overlay, subject to the following conditions:**

- 1. Before the commencement of the development, 1 copy of plans drawn to scale and fully dimensioned, must be submitted to and approved by the Responsible Authority. The plans must be generally in accordance with the advertised plans (Drawings TP01-TP12 & TP-20-TP22, Rev A), and Council date stamped 27 May 2020 and Discussion Shadow Plans (Drawings TP13-TP19, Rev B) and Council date stamped 13 October 2020, but modified to show:**
  - a) Details of screening measures, including materials, dimensions and clearly demonstrating no more than 25% transparency through a sectional diagram must be submitted. Screening to limit overlooking in accordance with Standard B22 of Clause 55 must be provided to the following windows:**
    - East-facing bedroom window at first floor of Dwelling 4.**
    - South-facing bedroom window at first floor of Dwelling 4.**
    - North-facing Bedroom 3 window at first floor of Dwelling 4.**
  - b) Additional sight line diagrams to be provided for the south-facing first floor windows of Dwellings 2 and 3 to demonstrate no unreasonable overlooking or increase sill height to 1.7 metres above finished floor level, in accordance with the standard and objectives of B22.**
  - c) Increased setback to the south-facing first floor wall of Dwelling 4 to comply with Standard B17 of Clause 55, from the southern boundary.**
  - d) A notation on the plans that the existing vehicular crossing be made redundant and that kerb and channel must be constructed in its place to the satisfaction of the Responsible Authority.**
  - e) A notation to be included on the plans confirming double-glazing to all habitable spaces, windows and doors.**
  - f) A notation to be included on the roof plan confirming the area (in square metres) to drain to the rainwater tanks.**
  - g) Proposed access to the in-ground rainwater tanks for maintenance is required to be detailed on the plans.**
  - h) A notation is to be included on the plans confirming a floor waste and tap to each private open space.**
  - i) A notation included on the floor plans depicting the area between the external face of the ground floor garages and the north boundary of the subject land as “public access land”.**
  - j) A notation included on the floor plans depicting the area between the external face of the ground floor garage and the east boundary of the subject land as “public access land”.**
  - k) Any changes required by Conditions 3 (Landscape Plan, Condition 5 (Waste Management Plan) or Condition 6 (Sustainable Design Assessment).**

**All to the satisfaction of the Responsible Authority.**

2. ***The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority.***
3. ***Concurrent with the endorsement of plans, a landscape plan to be prepared by a landscape architect or suitably qualified or experienced landscape designer, must be submitted to and approved by the Responsible Authority. When approved, the landscape plan will be endorsed and will then form part of the permit. The landscape plan must be drawn to scale with dimensions. The landscape plan must be generally in accordance with the landscape concept plans submitted to Council, prepared by Plume and date stamped 27 May 2020, but modified to show:***
  - a) ***A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.***
  - b) ***More robust and suitable planting (7 metre – 8 metre canopy trees) to be planted within the frontage, rear and southern setbacks of the development.***
  - c) ***The height of proposed landscaping within the north-west corner of the site (within the 'visual splay area') should not exceed a height of 900mm.***

***To the satisfaction of the Responsible Authority.***

4. ***Before the occupation of the development, the landscaping works as shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority. Landscaping at ground, first and second floor including planter boxes, must then be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.***
5. ***Concurrent with the endorsement of plans, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The Waste Management Plan must include:***
  - a) ***Dimensions of waste areas.***
  - b) ***The number of bins to be provided.***
  - c) ***Method of waste and recyclables collection.***
  - d) ***Hours of waste and recyclables collection.***
  - e) ***Method of presentation of bins for waste collection.***
  - f) ***Strategies for how the generation of waste and recyclables from the development will be minimised.***

***When approved, the plan will be endorsed and will then form part of the permit. Waste collection from the development must be in accordance with the plans, to the satisfaction of the Responsible Authority.***

6. ***Concurrent with the endorsement of any plans pursuant to Condition 1, a Sustainable Design Assessment (SDA) must be approved by the Responsible Authority. Upon approval, the SDA will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SDA to the satisfaction of the Responsible Authority. The report***

**must be generally in accordance with the Sustainable Design Assessment (SDA) prepared by Ark Resources, Council date stamped 27 May 2020 and advertised in June 2020, but modified to include:**

**a) Management**

- **The submitted Sustainable Design Assessment (SDA) must be 'finalised' from 'draft' form, to be accepted.**

**b) Water**

- **Confirmation from the project Landscape Architect that the proposed planting meets the BESS criteria.**

**c) Energy**

- **Preliminary NatHERS certificates to be provided of each thermally similar group to substantiate the commitment made within the SDA and figures entered into BESS.**

**d) IEQ**

- **BESS credit 3.1 is claimed. A notation is to be included on the plans confirming double glazing to all habitable spaces, windows and doors.**
- **Shading: Adjustable external shading devices are not provided to all west facing glazing of habitable rooms (TH1 living and master bedroom). Adjustable vertical shading devices are to be used, which could be in the form of openable louvres, sliding shutters or external blinds.**

**e) Stormwater**

- **A notation is to be included on the roof plan confirming the area to drain to the rainwater tanks.**
- **As in-ground rainwater tanks are detailed on the plans, the proposed access to these tanks for maintenance is also required to be detailed on the plans.**

**f) Waste**

- **A score of zero is achieved under this category within BESS and this is to be addressed by the applicant.**

**g) Urban Ecology**

- **A notation is to be included on the plans confirming a floor waste and tap to each private open space.**

**All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to the Sustainable Management Plan may occur without the written consent of the Responsible Authority.**

- 7. Prior to the occupation of the development approved under this permit, a report from the author of the Sustainability Management Plan, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible**

**Authority and must confirm that all measures specified in the Sustainability Management Plan have been implemented in accordance with the approved plans.**

- 8. The project must incorporate the Water Sensitive Urban Design initiatives detailed in the endorsed site plan and/or stormwater management report.**
- 9. Prior to the endorsement of plans and prior to any development commencing on the site (including demolition and excavation whether or not a planning permit is required), a bank guarantee of \$3,045.00 must be provided to the Responsible Authority as security against a failure to protect the health of the Pyrus Calleryana (Callery Pear) street tree. Once a period of 12 months has lapsed following the completion of all works at the site, the Responsible Authority may discharge the bank guarantee upon the written request of the obligor. At that time, the Responsible Authority will inspect the tree(s) and, provided they have not been detrimentally affected, the bank guarantee will be discharged.**
- 10. Protection fencing must be afforded to the Pyrus Calleryana (Callery Pear) street tree at this location prior to construction works occurring. Fencing must comply with Section 4 of AS 4970 and form a 2m x 2m protection zone around the tree.**
- 11. No vehicular or pedestrian access, trenching or soil excavation is to occur within the tree protection zone without the written consent of the Responsible Authority. No storage or dumping of tools, equipment or waste is to occur within the tree protection zone.**
- 12. Prior to the occupation of the development, the permit holder(s) must at their cost construct the full length of the laneway (right-of-way) abutting the north boundary in accordance with a plan/design prepared by a suitably qualified Engineer and approved by Council's Infrastructure Unit. The works must be completed in accordance with the approved plan to the satisfaction and under the supervision of Council.**
- 13. Prior to a building permit being issued, a report for the legal point of discharge must be obtained from Council and a drainage design for the development must be prepared by a suitably qualified Engineer in accordance with all 'recommendations' and requirements contained in that report. All drainage must be by means of a gravity based system. The relevant building surveyor must check and approve the drainage design and ensure that protection of the building is provided from a 1 in 100 A.R.I. rainfall event as required by the Building Regulations.**
- 14. Prior to the occupation of the building or commencement of use, the existing vehicular crossing made redundant by the building and works hereby permitted must be broken out and re-instated as standard footpath and kerb and channel at the permit holders cost to the approval and satisfaction of the Responsible Authority.**
- 15. The applicant must at their cost provide a stormwater detention system to restrict runoff from the development to no greater than the existing runoff based on a 1 in 10 A.R.I. to the satisfaction of Council's Infrastructure Unit. Alternatively, in lieu of the stand- alone detention system, the owner may provide stormwater tanks that are in total 3,000 litres greater than those tanks required to satisfy WSUD requirements for the development. Those tanks must be connected to all toilets.**

16. **Prior to the occupation of the building, the owner of the land must enter into an agreement with the Responsible Authority under section 173 of the Planning and Environment Act 1987 to covenant that it will:**
- a) **Allow free and unimpeded public access over the following “public access land” at all times:**
    - **Land between the external face of the ground floor garages and the north boundary of the subject land; and**
    - **Land between the external face of the ground floor garage and the east boundary of the subject land.**
  - b) **Indemnify Council for any damage to the development by reason of, or in connection with, the use of the “public access land” by the public;**
  - c) **Not make any claim for damages or loss of any kind against Council for damage or injury cause to the “public access land” or to any person using the “public access land”;**
  - d) **Maintain public liability insurance for the use of the public access land”; and**
  - e) **Maintain the “public access land” in accordance with the endorsed plans and to a standard that is safe and fit for public access to the satisfaction of the Responsible Authority.**

**The agreement must be registered with the Registrar of Titles in accordance with section 181 of the Planning and Environment Act 1987 and will run with the land, including any common property that may be created as part of the subdivision of the land. All costs (including legal costs) associated with the preparation and review of the agreement and registration of the agreement on the Certificate of Title for the land must be paid by the owner.**

**Melbourne Water Conditions**

17. **The finished floor levels of all dwellings must be set no lower than 31.7 metres AHD which is 300mm above the applicable flood level.**
18. **The finished surface levels of the garages must be set no lower than 31.0 metres to AHD which is the applicable flood level at that location.**
19. **All open space areas must be set at natural surface levels.**
20. **The driveway must be set at the natural surface level except for minimal fill required for ramping up into grades.**
21. **A 1 metre setback must be provided along southern and northern boundaries to convey overland flows.**
22. **A minimum 3 metre setback is required at the front of the property which must be set at natural surface levels.**
23. **All fencing must be of an open/paling style.**
24. **No retaining wall or brick fence at the front of the property.**

**End Melbourne Water Conditions**

25. **Prior to the occupation of the building, fixed privacy screens (not adhesive film or timber screens) designed to limit overlooking as required by Standard B22 of**

**Clause 55.04-6 in accordance with the endorsed plans must be installed to the satisfaction of the Responsible Authority and maintained to the satisfaction of the Responsible Authority thereafter for the life of the building.**

- 26. All plant and equipment (including air-conditioning units) shall be located or screened so as to minimise visibility from any of the surrounding footpaths and from overhead views and shall be baffled so as to minimise the emission of unreasonable noise to the environment in accordance with Section 48A of the Environment Protection Act 1970 to the satisfaction of the Responsible Authority.**
- 27. All utility services to the subject land and buildings approved as part of this permit must be provided underground to the satisfaction of the Responsible Authority by completion of the development.**
- 28. Any poles, service pits or other structures/features on the footpath required to be relocated to facilitate the development must be done so at the cost of the applicant and subject to the relevant authority's consent.**
- 29. This permit will expire if one of the following circumstances applied:**
  - a) The development is not started within two years of the date of this permit.**
  - b) The development is not completed within four years of the date of this permit.**

**In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.**

**NOTES:**

- A. This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained.**
- B. Nothing in the permit hereby issued may be construed to allow the removal of, damage to or pruning of any street tree without the further written consent of the Stonnington City Council. Contact the Council Arborists on 8290 1333 for further information.**
- C. Council has adopted a zero tolerance approach in respect to the failure to implement the vegetation related requirements of Planning Permits and endorsed documentation. Any failure to fully adhere to these requirements will be cause for prosecution. This is the first and only warning which will be issued.**
- D. The owners and occupiers of the dwelling/s hereby approved are not eligible to receive "Resident Parking Permits".**

**Melbourne Water Note**

- E. The estimated flood level for the property grades from 31.4 metres to Australian Height Datum (AHD) at the southern boundary down to 31.0 metres to AHD at the northern boundary.**

**End Melbourne Water Note**

- F. At the permit issue date, Section 69 of the Planning and Environment Act 1987 stated that the Responsible Authority may extend the periods referred to if a request is made in writing within the following timeframes:**

- i. Before or within 6 months after the permit expiry date, where the development allowed by the permit has not yet started; and***
- ii. Within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.***

## 14.3 Planning Application 0311/20 - 3A & 3B Murray Street, Prahran

**Manager Statutory Planning: Alex Kastaniotis**

**Director Planning & Place: Stuart Draffin**

### Purpose of Report

For Council to consider a planning application for the construction of a dwelling on a lot under 500sqm within a General Residential Zone and Special Building Overlay, a reduction to the car parking requirement and removal of Party Wall Easement at 3A & 3B Murray Street, Prahran.

### Officer Recommendation Summary

That Council authorise Officers to issue a Notice of Decision to Grant a Planning Permit subject to conditions outlined in the Officer Recommendation.

### Executive Summary

Applicant:	Urbis
Ward:	South
Zone:	General Residential Zone, Schedule 12
Overlay:	Special Building Overlay, Schedule 1
Neighbourhood Precinct:	Inner Urban Character Precinct
Date Lodged:	23 April 2020
Statutory Days: (as at Council Meeting date)	103
Trigger for Referral to Council:	7 or more objections received
Number of Objections:	8
Consultative Meeting:	Yes – held on 10 September 2020
Officer Recommendation	Notice of Decision to Grant a Planning Permit

### Background

#### The Proposal

The plans that form the basis of Council's consideration were prepared by Kister Architects and can be referenced as Sheets X001, TP-00A, TP-00B, TP-00, TP01, TP02, TP-001 to TP-005, TP-005A, TP-006, TP-007, TP-007A, TP-008 to TP-020, Council date stamped 18 June 2020. The plans considered formed part of the advertising material.

Key features of the proposal include:



- The construction of a dwelling on a lot less than 500sqm in a General Residential Zone and Special Building Overlay, a reduction in the car parking requirement and the removal of an easement.
- The new dwelling will be constructed to a height of three storeys (9.53 metres), with the dwelling entry located on the corner of Murray and York Street.
- The dwelling will feature an outdoor courtyard within the front setback, a master bedroom, light court and studio at ground floor, three bedrooms at first floor and an open plan living area, with access to a terrace, at second floor.
- Parking is to be provided on site in the form of a single width garage accessed via York Street, generating a parking waiver of one space.
- A party wall easement (shared between 3A and 3B Murray Street) is to be removed.
- The proposal will have a total site coverage of 77%, with 22.99% of the land remaining permeable.
- The development is of a contemporary architectural style. It has sought to preserve the existing shopfront facade and will feature timber cladding, render and perforated metal cladding.

### Site and Surrounds

The subject site comprises two separate land parcels on the north-west corner of the Murray Street and York Street, Prahran. The site has a combined frontage of approximately 10.84 metres to Murray Street and 18.45 metres to York Street, equating to a total site area of approximately 189sqm.

Currently occupying the site is a single storey mid Victorian era red brick building that previously operated as a milk bar and was subsequently refurbished to operate as a café and a 1-bedroom dwelling. The existing building is built with a zero setback to each street frontage, generally encompassing the entire site area. A party wall easement splits the site in two, while a Drainage easement and right of way easement run along the northern (rear) boundary.

The subject site is located within an established residential area, defined by a mixed built form typology including, single storey weatherboard and brick dwellings and new 2-3 storey infill developments. Properties within the immediate context generally feature limited side setbacks, high levels of site coverage, consistent street setbacks and in some cases, landscaped front setbacks, although these are often restricted in size and a mixture of high and low front fencing.

The immediate neighbourhood is well serviced by way of public transport and proximate to general amenities, open spaces and schools. The site is located approximately 350 metres south of bus and tram services running along Malvern Road, 350 metres north of tram services running along High Street, 220 metres west of Victoria Gardens, 190 metres east of Princes Gardens, 850 metres from Prahran High School, and within walking distance of a shopping district.

Surrounding development and land uses include:

- Abutting the site to the **north**, at No. 67 York Street, is a single-storey weatherboard dwelling with a hipped roof form. This dwelling features a 5.09 metre front setback, minimal setbacks to all other boundaries and open space to the rear, distanced from the common boundary shared with the subject site. Importantly, the existing dwelling is constructed to the common boundary, with no south-facing habitable room windows. No car parking is provided on site.

- The site abuts Murray Street to the **south**. Two contemporary three-storey dwellings are located beyond the road reserve at No. 6A & 4A Murray Street.
- The subject site abuts York Street to the **east**, with a round-about located at the intersection of Murray and York Street. Beyond the road reserve, at No.5 Murray Street, is a single storey dwelling. The dwelling is built to its side boundaries, with secluded private open space located to the rear.
- Abutting the site to the **west**, at No. 3 Murray Street, is a single storey brick dwelling sited 1.99 metres from the street frontage, with a verandah that projects into the front setback. This property is constructed to the common boundary except for a small light court which provides daylight to two existing habitable room windows in this location. The existing windows however face inward and not towards the subject site. A small area of secluded private open space is located at the rear of the property. No car parking is provided on site.

#### Previous Planning Application/s

- Planning Application 0922/19 was lodged on the 12 November 2019 seeking to construct a dwelling on a lot less than 500sqm in a General Residential Zone and Special Building Overlay and a reduction in the car parking requirement. The application proposed a similar design to the current proposal under consideration, however it yielded a need for further information and various concerns, including from Council's Urban Designer. Concerns included a dominance of car parking along York Street, upper floor visual bulk and a need to reduce the western boundary wall height to two-storeys, increase setbacks and produce a more sympathetic design response. Due to a failure to respond to Council's request for further information (RFI) the application lapsed.

The current application under consideration was lodged in order to revive this proposal, however in a form that sought to address the issues raised in the RFI. More specifically:

- A double width garage was replaced with a single width garage, reducing its dominance within the streetscape.
- Setbacks to the second floor were increased, significantly reducing the size and dominance of the top floor.
- Reducing the western boundary wall height to two-storeys.
- Redefining the façade compositions and altering the types of materials proposed to provide for a more sympathetic design response.

#### The Title

The subject site is made up of two lots registered on Title as:

- Lot 2 on Title Plan 850166J, Volume 08462, Folio 937 (eastern-most lot).
- Lot 1 and 2 on Title Plan 850233V, Volume 08007, Folio 022 (western-most lot).

A party wall easement runs from north to south, dividing the site in two, while a drainage easement and right-of-way runs along the northern (rear) boundary.

The land is not affected by any covenants.

#### Planning Controls

The following controls/permit triggers are relevant to the consideration of this application:

- **Zone**  
**General Residential Zone, Schedule 12**

Pursuant to Clause 32.08-5, a permit is required to construct or extend one dwelling on a lot less than 500sqm. The subject site equates to a site area of 189sqm.

**Minimum Garden Area**

The minimum garden area requirements specified at Clause 32.08-4 do not apply where the land is less than 400sqm.

**Maximum building height**

The dwellings will reach a maximum height of 9.53 metres (3 storeys), which is within the maximum 11 metre (3 storey) height requirement of Clause 32.08-10.

- **Overlay**

**Special Building Overlay, Schedule 1**

Pursuant to Clause 44.05-2, a permit is required to construct a building or to construct or carry out works.

- **Particular Provisions**

**Clause 52.02 - Easements, Restrictions & Reserves**

Pursuant to Clause 52.02, a permit is required before a person proceeds under Section 23 of the Subdivision Act 1988 to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant. The application has sought the removal of a party wall easement.

**Clause 52.06 - Car Parking**

Pursuant to Clause 52.06-3, a permit is required to reduce the number of car parking spaces required under Clause 52.06-5. A four-bedroom dwelling generates a parking requirement of two spaces. A single width garage is proposed, yielding a parking waiver of one space.

**Clause 54 – One Dwelling on a Lot**

This application has been assessed against the provisions of this clause. Refer to the 'Key Issues & Discussion' Section of this report for further information.

**Relevant Planning Policies**

Clause 22.02	Urban Design
Clause 21.05	Housing
Clause 21.06	Building Environment and Heritage
Clause 22.23	Neighbourhood Character
Clause 32.08	General Residential Zone
Clause 52.02	Easements, Restrictions & Reserves
Clause 52.06	Car Parking
Clause 54	One Dwelling on a Lot (ResCode)

**Advertising**

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987* by sending notices to the owners and occupiers of adjoining land (and by placing two signs on the site). The public notification of the application has been completed satisfactorily.

The site is located in South Ward and objections from eight (8) different properties have been received and can be summarised as follows:

- The café use forms part of the community
- Building construction will cause a disruption by way of noise and parking.
- The milk bar façade will be lost
- The proposal is an eyesore
- The design is inappropriate and not in keeping with neighbourhood character
- There is insufficient on street parking

A Consultative Meeting was held on 10 September 2020. The meeting was attended by Councillors Stefanopoulos, Sehr and Hindle, representatives of the applicant, and a Council planning officer. The meeting was not attended by any objectors. As such, the meeting did not result in any changes to the plans.

## Referrals

### **Melbourne Water**

Pursuant to Section 56(1) of the Planning and Environment Act 1987, Melbourne Water do not object to the proposal, subject to the following conditions:

1. The dwelling must be constructed with finished floor levels set no lower than 17.01 metres to Australian Height Datum (AHD), which is 300mm above the applicable flood level of 16.71m to AHD.
2. The garage must be constructed with finished floor levels set no lower than 16.6 metres to Australian Height Datum (AHD), which is at the applicable graded flood level at the location of the garage.
3. The Studio must be constructed with finished floor levels set no lower than 16.9 metres to Australian Height Datum (AHD), which is 300mm above the applicable graded flood level at that location.
4. Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.
5. All open space within the property must be maintained at natural ground surface levels with the exception of minimal ramping into the garage, and must be kept clear of all permanent structures (i.e. sheds, retaining walls, raised garden beds or water tanks with the exception of open style fencing).

### **Infrastructure**

The Special Building Overlay is under the control of Melbourne Water. A standard condition will be included regarding legal point of discharge.

### **Urban Design**

The application was referred to Council's Urban Design who has advised that the revised proposal represents an acceptable response to this unusual corner site and to the evolving surrounding context.

### **Transport**

- The proposal includes a garage with one parking space on site and generates a shortfall of one space. This is not considered to be appropriate given the location and the existing parking demands in the area.
- The traffic impact of this proposal, considering it is a single dwelling on a site, is anticipated to be negligible.

- Whilst the provisions of Design Standard 1 (Accessways) and Design Standard 3 (Gradients) of Clause 52.06 (Car Parking) do not apply to the proposal, the following comments are made:
  - The plans dimension the accessway as 3.0m, meeting the minimum requirements of the Planning Scheme.
  - The plans should be revised to show a garage clearance height of 2.1 metres as measured when the garage door is on the open position.
  - The plans submitted do not show sight triangles at the property boundary. It is recommended that the applicant provide a 2m x 2.5m sight triangle on both sides of the accessway at the property boundary.
  - The plans do not indicate the proposed floor gradient of the garage. The minimum gradient is to be 1:200 (0.5%) to allow for adequate drainage as stated in AS2890.1.
- The plans indicate that the proposed garage has internal dimensions of 6.0m by 3.87m, meeting the requirements of Design Standard 2. Further to the requirements of this standard, swept path diagrams using a B99 design vehicles should be provided.
- The proposed vehicle crossing has been assessed against the requirements of Council's Vehicle Crossing Policy and deemed to be compliant with the 3.0m wide with 1.3m straight splay requirement.
- The York Street frontage of the site is subject to a 10-MINUTE restriction. As part of this proposal, this area will likely revert to 2-HOUR parking. There is an existing linear control parking sign close to the northern splay of the vehicle crossing, which will need to be relocated.
- The Policy states new or modified vehicle crossings should not result in a net loss of parking opportunities. Currently there are three parking opportunities available as per the Australian Standards. If the proposed vehicle crossing were constructed two parking opportunities would remain north of the vehicle crossing. This would result in no net loss of parking opportunities as the one removed parking opportunity on street would be moved off street.

### **Officer's Response**

In light of the site context and its proximity to public transport, a parking waiver of one space is supported. This is discussed further within the 'Key Issues and Discussion' Section of this report.

Given that the requirements of Design Standard 1 and 3 do not apply to the proposal, compliance will not be required via permit condition.

Whilst Council's Vehicle Crossing Policy suggests the introduction of a crossover should not result in a net loss of car parking, the proposal has sought to provide a single width crossover to reduce its impact upon the street. The initial proposal submitted to Council included a double width garage and crossover, dominating the public realm. In response to concerns raised by Council officers, the width of the garage and crossover was subsequently reduced to comply with Council's Vehicle Policy, which encourages single width accessways to service dwellings. Given the sites location within a well-serviced area, it is not appropriate to require full compliance at the cost of neighbourhood character and in opposition to the various planning policies which encourage increased use of public transport options in areas such as the subject locality. As such, the proposal is considered to have struck an appropriate balance.

In response to referral advice, swept path diagrams were submitted to show vehicles will be able to enter and exit the site while other vehicles are parked along York Street. It is noted

that when vehicles are parked on both sides of York Street, there is only a single lane of traffic that can fit through, so vehicles enter the site from the middle of the street. Furthermore, any permit issued will require the relocation of an existing linear control parking sign currently located close to the northern splay of the vehicle crossing.

## Key Issues and Discussion

### Consistency with the Planning Policy Framework

The application has been assessed against relevant State and local planning policies and found to be compliant for the following reasons:

- The site is within a well-serviced area with convenient access to existing facilities such as public transport, schools, local shops and parks as further evidenced in earlier sections of this report. The proximity to these services present opportunities for future occupants to utilise sustainable methods of transport as sought after by Clause 18.02 (Movement Networks).
- The proposal will ensure housing stock matches changing demand by widening housing choice to include four-bedroom dwellings within a well-serviced area (Clause 16.01-35 - Housing).
- Clause 21.05-2 of the planning scheme identifies the site as being located within an incremental change area. The purpose of Clause 21.05-2 (Housing) will be supported through the provision of three storey dwelling which is representative of incremental change.
- The proposal is in keeping with Clause 21.06-4, which seeks to retain the low rise character of the majority of incremental changes areas in the City and provide medium density developments of 2 to 3 storeys where it respects the preferred character of the area. A three storey development is deemed to be in keeping with the existing built form character defining the immediate area and consistent with the preferred neighbourhood character statement applicable to the Inner Urban Neighbourhood Character Precinct. This is discussed within with the ResCode Assessment provided below.
- The proposal is consistent with 21.06-4 (Built Environment and Heritage) in that the design is considered to achieve acceptable architectural and urban design outcomes that contribute to local urban character while avoiding detrimental impact to neighbouring properties.

In light of the above, the application is considered to comply with the strategic directions of the Planning Policy Framework.

### Clause 54 (ResCode) Assessment

#### Neighbourhood Character

The proposal is considered to be respectful of existing character and the preferred character statement (discussed further below).

Pursuant to Clause 22.23, the subject site is situated within the Inner Urban Neighbourhood character precinct. The character statement applicable to this precinct can be summarised as seeking to encourage: 'innovative and high quality architectural styles, consistent front setbacks, well-designed gardens for small spaces, low or permeable front fencing and reduced dominance of car parking structures'.

The existing character of Murray Street is that of an established residential area, generally defined by a mixed built form typology including, single storey weatherboard and brick dwellings and new 2-3 storey infill developments. Properties within the immediate context

generally feature limited side setbacks, high levels of site coverage, consistent street setbacks and in some cases, landscaped front setbacks, although these are often restricted in size and a mixture of high and low front fencing.

The proposal shows regard for neighbourhood character and in turn compliance with Standard A1 (Neighbourhood Character), A2 (Street Integration), A19 (Design Detail) and the preferred neighbourhood character statement in that:

- The development represents a suitable architectural design response which is sufficiently articulated and employs a variety of materials including timber cladding, render and perforated metal cladding. The development is of a contemporary architectural style, in keeping with the preferred character statement.
- The inclusion of timber cladding, namely to the first floor, acts to reduce the prominence of the first floor and enable an adequate contrast to the level above. Contrasting elements provide for added articulation to assist with reducing visual bulk.
- The proposal has sought to replace a single storey building with a three storey dwelling. Whilst the adjoining sites to the north and west are single storey in height, the development has been designed to sit appropriately within the existing streetscape with minimal impact on the amenity of the adjoining properties. Additionally, other developments of three storeys reside within the immediate context including two three-storey dwellings at No. 4A & 6A Murray Street.
- The dwelling will not exceed a maximum height of 9.53 metres (3 storeys). This comfortably complies with the relevant ResCode standard, which requires a built form height of no more than 11 metres (3 storeys).
- The proposal has sought to provide a new courtyard garden behind the existing façade to increase landscaping opportunities and permeable surfaces beyond what is currently provided on site. Further, the courtyard provides an interesting and engaging façade treatment and positively contributes to the visual amenity of the street.

In light of the above, the proposal is considered to be an appropriate response to the site context and preferred and existing neighbourhood character.

### **Site Coverage**

The proposal will equate to a site coverage of 77%, exceeding the preferred maximum allowable 60% of the Standard. Whilst the proposal exceeds the requirements of this Standard, the proposal is deemed to be respectful of and consistent with the site coverages typically found within the surrounding area and the existing site coverage of the subject site. The existing building mostly encompasses the entirety of the subject site, with the exception of a small light court and easements to the rear of the site, similar to the proposed site coverage. As such, the proposal achieves the objective of the standard.

### **Side & Rear Setbacks**

The requirements of this standard apply to the northern and western elevations, where a wall is not constructed on or within 200mm of a boundary.

#### **North:**

Based on a Ground and First Floor wall height of 6.5m, the building should be sited 1.87m from the northern (rear) boundary. The Ground and First Floors are proposed to be set back between 1.102-1.254m from the northern boundary. As such, a 616-768mm variation is proposed at ground and first floor.

Based on a Second Floor wall height of 9.528m, the second floor should be sited 4.618m from the northern (rear) boundary. The Second Floor is proposed to be set back between 2.2-2.315m from the northern boundary. As such, a 2.303-2.418m variation is being sought.

**West:**

Based on a Second Floor wall height of 9.3m, the proposal generates a setback requirement of 4.39m. The Second Floor is proposed to be set back between 1.184-2.149m from the western boundary. As such, a 2.2-3.2m variation is being sought.

Whilst the proposal does not comply with the setback requirements of Standard A10, this is typical of the surrounding area and is considered appropriate on the basis that the proposal will not result in any unreasonable amenity impacts to surrounding properties. The dwelling to the north of the subject site is built to the common boundary with no habitable room windows or sensitive interfaces. Additionally, the proposal has been carefully designed with respect to its western interface. Where existing habitable room windows reside, the new dwelling is sited away from the boundary to provide for a light court. The existing windows face in-ward and away from the subject site, limiting any visual impacts. Further, given the upper floor will not be located directly parallel to the existing courtyard to the west, views of the upper floor will be limited from the existing courtyard. It is further noted that the level of articulation proposed has sought to reduce the prominence of upper floors, ensuring an adequate transition to adjoining development is achieved.

**Walls on Boundaries**

The building is to be simultaneously constructed along the western boundary and against a neighbouring boundary wall at No. 3 Murray Street. The western boundary wall will reach a height of two-storeys and will replace an existing single storey wall constructed on site in the same location. The development is also set back to provide for a light-court where it is adjacent to existing windows to the west, which face in-ward and away from the subject site. As such, where the wall is constructed against the neighbouring boundary wall, the proposal will not result in any adverse amenity impacts.

The northern first floor wall however, projects beyond the northern (rear) façade of the adjoining courtyard to the west and will therefore be visible from the neighbouring courtyard. As such, any permit issued will require the western-most bedroom at second floor to be set back in line with the rear façade of the property at No.3 Murray Street. This condition will reduce the dominance of the third level as viewed from the neighbouring courtyard.

**Daylight to Existing Windows**

All habitable room windows at the property west of the site are oriented away from the common boundary. As such the provisions of this standard do not apply to this proposal. Nevertheless, the proposal provides for a 4sqm light court where it is adjacent to the light court that services the existing windows to the west. Further, proposed upper floors are to be set-back and raked away from the western boundary to ensure adequate daylight is maintained.

An existing wall is constructed to the northern common boundary, with no habitable room windows to the north.

**Overshadowing**

The site benefits being in a corner location, where potential to result in additional overshadowing is limited to No.1 and No.3 Murray Street. The accompanying shadow diagrams demonstrate that:



- No additional overshadowing will occur to the secluded private open space (SPOS) of No.1 Murray Street. Any additional shadows at this time fall on the roof of this property.
- Whilst the SPOS of No.3 Murray Street will continue to experience a high degree of overshadowing throughout the day, this shadow is largely resulting from the existing building to its north (being No.67 York Street).

As such, the proposal does not result in any unreasonable overshadowing impacts to adjoining properties and satisfies the requirements of Standard A14.

### **Overlooking**

The proposal will not result in any overlooking concerns to the north and within 9 metres of the subject site and as such, window/balcony treatments will not be required. Possible overlooking may occur from the balcony and the first floor western-most bedroom window (facing north) to the existing courtyards to the west. As such, any permit issued will require compliance.

### **Clause 55.06 – Car Parking**

Pursuant to Clause 52.06-3, a four-bedroom dwelling generates a preferred parking requirement of two spaces. The application has sought to provide for one on-site parking space. A waiver of one parking space is deemed to be appropriate on the basis that:

- The site has been identified as being located within the Principal Public Transport Network (PPTN), with tram services running along High Street and Malvern Road (within 350m of the site), bus services running along Malvern Road, Prahran Train Station located within 850 metres and Hawksburn Train Station located within 950 metres of the subject site.
- An existing café and 1-bedroom dwelling currently occupies the subject site in the absence of on-site parking facilities. Based on a floor area of approximately 74sqm, the café generates a parking requirement of two spaces, while the 1-bedroom dwelling generates a parking requirement of one space. As such, the subject site has a parking “credit” of three spaces.
- The initial proposal put forward to Council sought the provision of a double width garage and crossover, dominating the public realm. In response to concerns raised by Council officers the width of the garage and crossover was reduced to comply with Council’s Vehicle Crossing Policy, which encourages single width accessways. The resulting proposal is deemed to be an acceptable outcome that has adequately balanced the competing policy objectives.

### **Clause 52.02 - Easements, Restrictions & Reserves**

Pursuant to Clause 52.02, when considering a removal or variation of an easement Council is required to consider the interests of all affected persons before deciding on an application. The applicant seeks the removal of a party wall easement that divides the site into two lots – 3A & 3B Murray Street. Both lots are in the same ownership, with no other beneficiaries. Further, the removal of this easement will have no adverse implications on other properties and as such, is recommended for approval.

### **Objections**

Concerns raised by objectors, that have not previously been addressed, are discussed below:

- The milk bar façade will be lost.
- *The application proposes to retain the facade of the existing building and creatively incorporating it into the design of the new dwelling.*

- The construction process will cause disruptions and the loss of the café use will cause detriment to the community feel.
- *Concerns relating to the construction process and the loss of a café use is not a planning related matter and therefore could not form part of Council's consideration.*

## Conclusion

Having assessed the application against the relevant planning controls, it is recommended that the proposal be supported for the following reasons:

- The height, scale and design of the new dwelling is in keeping with the emerging built form character and in-line with the preferred neighbourhood character statement.
- The proposal is largely compliant with the requirements of Clause 54 (ResCode). Where the proposal is non-compliant with the technical standard, it has achieved the objective of the standard, yielding an acceptable planning outcome.
- The subject site is identified as being located within the Principal Public Transport Network (PPTN), proximate to various modes of public transport including bus, tram and train services. Planning policy supports new development and increase use of public transport within well-serviced areas, supporting the proposed waiver of car parking.

## Governance Compliance

### Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

### Human Rights Consideration

This application has been assessed in accordance with the requirements of the Planning and Environment Act 1987 (including the Stonnington Planning Scheme), reviewed by the State Government and which complies with the Charter of Human Rights & Responsibilities Act 2006.

## Attachments

1. 0311/20 - 3A & 3B Murray Street, Prahran [**14.3.1** - 36 pages]

## Officer Recommendation

***That Council AUTHORISE Officers to issue a Notice of Decision to Grant Planning Permit 0311/20 for the land located at 3A & 3B Murray Street, Prahran under the Stonnington Planning Scheme for the construction of a dwelling on a lot under 500sqm within a General Residential Zone and Special Building Overlay, a reduction to the car parking requirement and removal of Party Wall Easement registered on Title Plan 850166J Volume 08462 Folio 937 and Title Plan 850233V Volume 08007 Folio 022, subject to the following conditions:***

1. ***Before the commencement of the development, one copy of plans drawn to scale and fully dimensioned, must be submitted to and approved by the Responsible Authority. The plans must be generally in accordance with the Advertised Plans prepared by Kister Architects and Council date stamped 18 June 2020, but modified to show:***
  - a) ***The western-most bedroom at first floor set back in line with the rear façade of the property at No.3 Murray Street.***

- b) ***The floor plans revised to show all services and/or structures clear of the drainage easement and right-of-way.***
  - c) ***The eastern elevation revised to show the deletion of the side gate proposed to enclose the right-of-way running along the northern boundary.***
  - d) ***A notation to state: 'If the existing linear control parking sign located adjacent to the northern splay of the vehicle crossing is to be relocated it must be done at the cost of the developer and to the satisfaction of the Responsible Authority'.***
  - e) ***The proposed balcony treated to limit overlooking to the west in accordance with the requirements of Standard A15 (Overlooking).***
  - f) ***A sectional diagram illustrating the first floor western-most bedroom window (facing north) will not result in overlooking to the existing courtyard of No.3 Murray Street. Where overlooking may occur, the window must be treated in accordance with the requirements of Standard A15 (Overlooking).***
  - g) ***A Plan of Subdivision showing the removal of the party wall easement.***
  - h) ***A Landscape Plan in accordance with Condition 3.***  
***To the satisfaction of the Responsible Authority.***
2. ***The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason, without the prior written consent of the Responsible Authority.***
  3. ***Concurrent with the endorsement of plans, a landscape plan must be prepared in accordance with the Landscape Plan prepared by Kister Architects, Council date stamped 18 June 2020. When approved, the landscape plan will be endorsed and will then form part of the permit. The landscape plan must be drawn to scale with dimensions.***
  4. ***Before the occupation of the development, the landscaping works as shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority. Landscaping must then be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.***
  5. ***The project must incorporate the Water Sensitive Urban Design initiatives detailed in the endorsed site plan and/or stormwater management report.***
  6. ***Prior to the occupation of the building, fixed privacy screens (not adhesive film) designed to limit overlooking as required by Standard A15 of Clause 54.04-6 in accordance with the endorsed plans must be installed to the satisfaction of the Responsible Authority and maintained to the satisfaction of the Responsible Authority thereafter for the life of the building.***
  7. ***Prior to the occupation of the building/commencement of use, the walls on the boundary of the adjoining properties must be cleaned and finished to the satisfaction of the Responsible Authority.***
  8. ***Prior to commencement of works, a report for the legal point of discharge must be obtained from Council and a drainage design for the development must be prepared in accordance with all 'recommendations' and requirements in that report prior to a building permit being issued. Protection of the building must be***

*provided from a 1 in 100 A.R.I. event as required by the Building Regulations and all drainage must be by means of a gravity based system.*

9. *All utility services to the subject land and buildings approved as part of this permit must be provided underground to the satisfaction of the Responsible Authority by completion of the development.*

**Melbourne Water Conditions**

10. *The dwelling must be constructed with finished floor levels set no lower than 17.01 metres to Australian Height Datum (AHD), which is 300mm above the applicable flood level of 16.71m to AHD.*
11. *The garage must be constructed with finished floor levels set no lower than 16.6 metres to Australian Height Datum (AHD), which is at the applicable graded flood level at the location of the garage.*
12. *The Studio must be constructed with finished floor levels set no lower than 16.9 metres to Australian Height Datum (AHD), which is 300mm above the applicable graded flood level at that location.*
13. *Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.*
14. *All open space within the property must be maintained at natural ground surface levels with the exception of minimal ramping into the garage, and must be kept clear of all permanent structures (i.e. sheds, retaining walls, raised garden beds or water tanks with the exception of open style fencing).*

**END Melbourne Water Conditions**

15. *This permit will expire if one of the following circumstances applies:*
  - a) *The development is not started within two years of the date of this permit.*
  - b) *The development is not completed within four years of the date of this permit.*

*In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.*

16. *This permit will expire if one of the following circumstances applies:*
  - a) *The removal of easement is not certified under Section 6 of the Subdivision Act 1988 within two years of this permit.*
  - b) *The removal of easement is not registered by the Registrar of Titles within five years of the date of certification.*

*The Responsible Authority may extend the period referred to for certification if a request is made in writing before the permit expires or within three months afterwards.*

**NOTES:**

- A. *This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained.*

- B. Nothing in the permit hereby issued may be construed to allow the removal of, damage to or pruning of any street tree without the further written consent of the Stonnington City Council. Contact the Council Arborists on 8290 1333 for further information.**
- C. At the permit issue date, Section 69 of the Planning and Environment Act 1987 stated that the Responsible Authority may extend the periods referred to if a request is made in writing within the following timeframes:**
  - i. Before or within 6 months after the permit expiry date, where the development allowed by the permit has not yet started; and**
  - ii. Within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.**

## 14.4 Annual Report 2019-20

**Manager Strategy & Performance:** Mathew Burke  
**Director Corporate Services:** Chris Balfour

### Purpose of Report

To present the Annual Report for the 2019-20 financial year (**Attachment 1**).

### Officer Recommendation

#### **That Council:**

- 1. ENDORSE the Annual Report 2019-20.**
- 2. NOTE that the Annual Report 2019-20 fairly represents Council's operations, financial position and Council's performance for the 2019–20 financial year.**
- 3. NOTE that the Annual Report 2019-20 will be submitted to the Minister for Local Government within the required timeframe announced for 2020-21.**
- 4. NOTE that the Annual Report 2019-20 meets the requirements of the Local Government Act 1989.**
- 5. NOTE that the Annual Report 2020-21 will be prepared in accordance with the Local Government Act 2020.**

### Executive Summary

Council has prepared an Annual Report for the financial year 1 July 2019 to 30 June 2020 to meet our obligations under Section 131 of the Local Government Act 1989.

The Annual Report 2019-20 is the third progress report against our Council Plan 2017-21. It comprises three sections; Report of operations, Performance statement and Financial statements. It reflects and considers the impact of COVID-19 from March to the end of June in 2020.

On 28 September 2020, Council approved in principle the Performance statement and Financial statements. These statements were also considered by Council's Audit Committee at a meeting on 23 September 2020.

As required by the Act, Council must hold an open meeting to consider the report, with 14 days public notice given.

The Annual Report 2019-20 will be delivered to the Minister for Local Government in accordance with the extended deadline of 30 November 2020.

### Background

Under Section 131 of the Local Government Act 1989 (the Act) and Local Government Planning and Reporting Regulations 2014, councils are required to prepare an Annual Report in respect of each financial year consisting of three parts:

- Report of operations: Information about the operations of the Council including service performance indicator results, achievement of major initiatives and a governance and management checklist.

- Performance statement: Audited results achieved against the prescribed performance indicators and measures.
- Financial statements: Audited financial statements prepared in accordance with the Australian Accounting Standards.
- On 28 September 2020, Council approved in principle the Performance statement and Financial statements for the year ended 30 June 2020 (s132). These statements were also considered by Council's Audit Committee at a meeting on 23 September 2020.

The Act also stipulates that:

- The Annual Report must be submitted to the Minister for Local Government within three months of the end of each financial year (s133).
- Council must hold an open meeting to consider the report, with 14 days public notice given (s134 and Regulation 22 of the Local Government (Planning and Reporting) Regulations 2014).
- Statutory advertising of the meeting; undertaken in 'The Age' on Monday 5 October 2020 (s133).

The Minister for Local Government announced an extended deadline for annual reporting to 30 November 2020 due to the impacts of COVID-19.

Provisions in the Act relating to the preparations of Annual Reports are scheduled to be superseded by relevant sections of the Local Government Act 2020 on 24 October 2020 and will apply to the Annual Report 2020-21.

### Key Issues and Discussion

The Annual Report provides the opportunity for the City of Stonnington to communicate to the community its achievements and challenges of the past financial year. The structure of the Annual Report is aligned to the Council Plan 2017–21.

All legislative requirements have been met, with the financial statements prepared as required by the Act, the Local Government (Planning and Reporting) Regulations 2014, Australian Accounting Standards and other mandatory professional reporting requirements.

The financial position of Council remains strong, with the financial statements considered by the Audit Committee on 23 September 2020 and Council on 28 September 2020. The Victorian Auditor General's Office undertook an independent audit of the financial and performance statements for the financial year 2019–20.

The Annual Report 2019–20 fairly represents Council's operations, financial position and performance for the financial year in the context of the Council Plan 2017–21.

The Annual Report 2019-20 appropriately reflects the impact of COVID-19 on Council's operations, financial position and performance for the financial year.

The preparation of Council's Annual Report 2019–20 meets all requirements of the Act.

### Conclusion

The City of Stonnington's Annual Report for the 2019–20 financial year is presented to Council.

Council's financial position remains strong, with the Victorian Auditor General's Office providing unqualified audit opinion on the financial and performance statements. The Annual Report fairly represents Council's operations, financial position and Council's performance for the 2018–19 financial year and the impact of COVID-19 during the reporting period.

The Annual Report will be submitted to the Minister for Local Government by 30 November 2020 in accordance with the extended deadline. The preparation of Council's Annual Report 2019–20 meets all requirements of the Act.

## **Governance Compliance**

### **Policy Implications**

There are no policy implications associated with this report.

### **Financial and Resource Implications**

There are no financial and resource implications associated with this report.

### **Conflicts of Interest Disclosure**

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

### **Legal / Risk Implications**

There are no legal / risk implications relevant to this report.

### **Stakeholder Consultation**

There was no requirement for external stakeholder consultation in this proposal.

### **Human Rights Consideration**

Complies with the Charter of Human Rights & Responsibilities Act 2006.

## **Attachments**



**15 Confidential Business**