VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference No. P1833/2018Permit Application no. TPA/48690 |
| CATCHWORDS |
| Section 77 *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone; Dwellings; Policy; Neighbourhood character. |

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| APPLICANT | Debbie Kafaltis |
| responsible authority | Monash City Council |
| SUBJECT LAND | 44 George Street, Oakleigh |
| WHERE HELD | Melbourne |
| BEFORE | Bill Sibonis, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 26 March, 2019 |
| DATE OF ORDER | 29 April, 2019 |
| CITATION | Kafaltis v Monash CC [2019] VCAT 504 |

# Order

1. Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

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| * Prepared by:
 | Finley Roberts Design |
| * Drawing numbers:
 | TP-01 to TP-09 (inclusive) |
| * Revision:
 | A |
| * Job No.:
 | 17-163 |
| * Dated:
 | 06.02.18 |

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| Prepared by: | Zenith Concepts, Landscape Design |
| Dwg No.:Dated: | Sheet 1 of 1February 2018 |

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| Prepared by: | Carter Grange Homes Pty Ltd |
|  | Schedule of colours and finishes |

1. In application P1833/2018 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/48690 no permit is granted.

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| Bill Sibonis**Member** |  |  |

# Appearances

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| For D Kafaltis | Mr C Pippo, Town Planner of The North Planning |
| For Monash City Council | Mr D De Giovanni, Town Planner of David De Giovanni Town Planning |

# Information

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| Description of proposal | The construction of two, two-storey attached dwellings. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone – Schedule 2, Monash Residential Areas (GRZ2) |
| Permit requirements | Cl. 32.08-6 (the construction of two or more dwellings on a lot) |
| Key scheme policies and provisions | Cl. 11, 15, 16, 21, 22.01, 22.04, 22.06, 32.08, 52.06, 55 and 65 |
| Land description | The review site is located on the east side of George Street, between Burlington Street and Edward Street, in Oakleigh. It is a regular lot with a frontage of 15.24 metres and a depth of 35.62 metres, yielding an overall area of 543 square metres. The property is occupied by a single-storey detached dwelling. Surrounding land is developed in the form of single dwellings, predominantly single storey. |
| Tribunal inspection | An inspection was undertaken after the hearing. |

# Reasons[[1]](#footnote-1)

## What is this proceeding about?

1. This proceeding concerns a proposal to demolish the existing dwelling on the review site and construct two, two-storey attached dwellings in its place. The Monash City Council (‘the Council’) refused a planning permit on grounds which address matters of neighbourhood character and amenity.
2. The applicant has applied to the Tribunal for a review of the Council’s decision.
3. Based on the submissions, the key issue for determination is whether the development will contribute to the preferred (or desired) neighbourhood character.
4. The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered the submissions, with regard to the relevant policies and provisions of the Monash Planning Scheme, assisted by my inspection, I have determined to affirm the Council’s decision. My reasons follow.
5. There is no dispute between the parties that the site is well located to accommodate medium density housing, given its proximity to the Huntingdale activity centre, which includes the Huntingdale railway station. The proposal complies with those policies within the Planning Policy Framework and the Local Planning Policy Framework that support increased residential densities in established areas to make better and more efficient use of infrastructure and services.[[2]](#footnote-2) The proposal would also contribute to housing diversity, as sought by policy at clause 16.01-3S.
6. The dispute centres on whether the development will represent an acceptable built form outcome in the context of this neighbourhood, having regard to its existing and preferred (or desired) character. Relevant policies addressing the need to achieve acceptable neighbourhood character responses are found at clauses 15.01-5S and 22.01. Clause 21.04 of the Municipal Strategic Statement (MSS) also sets out the objectives and strategies in respect of neighbourhood character.
7. A purpose of the GRZ2 is to encourage development that respects the neighbourhood character of the area. Pursuant to clause 21.04, new development should be carefully designed and sited to complement the current character and satisfy the intent of the desired future character statements for each residential character type as identified. The Garden City Character within all residential areas should be maintained and enhanced. An objective is to ensure that development is appropriate having regard to the residential environment of the area, in particular neighbourhood character and amenity. Related strategies include:
* Ensure that new residential development enhances the character of the neighbourhood, having regard to the preferred character statements contained within Clause 22.01.
* Ensure that development enhances the Garden City and landscaped streetscape character of the neighbourhood, responds to the features of the site and surroundingarea and promotes good streetscape design.
* Ensure that new residential development achieves high quality architectural and urban design outcomes that positively contribute to neighbourhood character.
1. A detailed local policy, the Residential Development and Character Policy, is provided at clause 22.01. Amongst others, the objectives refer to building upon the important contribution that landscaping makes to the Garden City Character; and encouraging new development to achieve architectural and urban design outcomes that contribute to neighbourhood character, having particular regard to the desired future character statement for the applicable residential Character Type.
2. A key concern for the Council is in relation to the provision of two crossovers and driveways. Pursuant to clause 22.01-3, it is policy that:
* The Garden City Character of residential areas be retained by discouraging carparking and accessways that have a significant impact on or cause fragmentation of the streetscape.
* The number of vehicle crossings be minimised to maintain existing kerb side parking and green spaces in both front setback areas and in naturestrips.
* Hardening of the streetscape through the provision of additional crossovers is discouraged.
* Landscaping in the front setback areas of properties is to be maintained by minimising the number of crossovers provided on larger multi unit sites and placing vehicle parking to the rear on sites accommodating small to medium multi developments.
* Garages, carports and associated visitor spaces be designed so that they do not dominate or visually disrupt the streetscape.
1. The other concern the Council holds in respect of the proposal is the presentation of the built form in the streetscape. Again, pursuant to clause 22.01-3, it is policy that:
* The height and scale of existing dwellings in the neighbourhood be respected.
* Building spacings and setbacks off side boundaries maintain the spacing and rhythm of existing dwellings to respect the built form character of the streetscape.
* Similar building materials to that within the surrounding neighbourhood be utilised.
* A high degree of articulation and detailing be exhibited.
* Roof heights and pitches of adjoining development be respected.
* Creative and quality design solutions be provided, particularly in relation to bulk of buildings having regard to boundary setbacks.
* The same or similar built form and style be provided in streets that display aunified or dominant architectural or built form theme.
* Articulated and graduated elevations avoiding “box-like” designs be provided.
* Higher degrees of articulation be provided where double storey development is sought in streets where the predominant built form is single storey.
* The scale and bulk of double storey buildings at the rear of properties, adjacent to single storey dwellings, be low key. This can be achieved by generous upper floor articulation and setbacks off site boundaries sufficient to allow new landscaping incorporating canopy trees.
1. The site and its surrounds are within Residential Character Type A. The ‘Desired Future Character Statement’ reads:

The neighbourhood character of this area will evolve to retain evidence of its origins in the middle of the last century and of other eras of development by protecting buildings and precincts of identified heritage significance along with associated streetscape elements.

The built-form will be unified by consistency in building setback. New dwellings will address the street and complement the scale and form of adjacent buildings. Development that is inappropriate and out of scale with adjoining dwellings will not be supported.

Sympathetically designed architecture is encouraged in preference to imitations of historic styles.

Extensions or alterations to existing buildings will be sympathetic to the historic integrity of the building. Development that reinforces and promotes the heritage status of the Oakleigh area will be encouraged.

Front fences will be low. This enables vegetation to be visible from the street, allows clear views of buildings and gives the street an open and transparent quality. Fencing will complement the architecture of the building in design, colour and materials.

Existing mature trees and shrubs within properties will be retained and additional tree planting proposed to gradually create a tree canopy in the private domain.

The soft quality of the street that is derived from the wide nature strips will be maintained by ensuring that there is only one crossover per lot frontage.

The character of existing public open space within the Character Type will be protected by ensuring that buildings directly adjacent to such areas are set back and buffered with planting that complements that within the public open space.

1. The proposal includes two crossovers, each providing access to a single garage. The garages are positioned to the side of the dwellings. The garage of Dwelling 1 is set back 1.0 metre from the northern boundary, with the alignment of the driveway slightly splayed to the south-east to facilitate access. The garage of Dwelling 2 is to be constructed on the southern boundary. The driveway is aligned perpendicular to the side boundary with lesser opportunity for planting between the paving at the boundary than is possible on the northern side. According to the plans, the front garden space between the two driveways has an area of 31.42 square metres.
2. The development has a minimum ground floor setback of 7.6 metres. This increases to 9.6 metres for the Dwelling 1 garage, and 12.73 metres for Dwelling 2.
3. The Council’s submission described George Street as a “*highly intact streetscape, comprising predominantly original period dwellings*” and identified one of its key features as the absence of significant re-development. Contributors to the intactness were identified as including the dwelling widths and the single crossovers and associated driveways.
4. It was submitted that all but one of the 52 properties in the street have one crossover. The site with two crossovers is at No. 15, which comprises a ‘dual occupancy’ development constructed in the 1990s. The other sites which have more than one crossover are multi-dwelling developments on corner sites. The Council submitted that, in those instances, “*the two crossovers are stretched across a wide frontage and equate in proportion to typical single dwellings*”.
5. The Council emphasised the municipality’s Garden City Character, of which there are repeated references in the MSS. The “*generously proportioned and well planted front gardens*” were described as being fundamental to achieving this character. It submitted that the provision of two crossovers/driveways is a strong threat to the Garden City principles.
6. In the Council’s submission, the dual crossovers in this instance:
	* introduce an element that is present in only one of 52 properties (1.9%)
	* fragment the generous naturestrip
	* limit the amount of garden area and sense of space to the front of the site
	* result in a compact garden area in front of each dwelling that offers limited space for garden and planting as envisaged by policy. These areas do not achieve the sense of spaciousness and openness that characterises George Street
	* result in the garage doors and tandem car spaces sitting prominently in the streetscape
	* result in the potential loss of an on-street car space in a street that has parking restrictions on both sides.
7. The Council noted the following findings of the Tribunal in the matter of *Zelezny v Monash CC* (‘*Zelezny*’)*:*[[3]](#footnote-3)

13 A proper assessment must have regard to all relevant policies and a balancing of the policies needs to be undertaken in order to achieve an acceptable outcome. Key policies in this case are those addressing the provision of increased residential densities and dwelling diversity,[[2]](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2017/920.html?context=1;query=zelezny;mask_path=au/cases/vic/VSC+au/cases/vic/VSCA+au/cases/vic/VicCorC+au/cases/vic/VCC+au/cases/vic/VMC+au/cases/vic/VicRp+au/cases/vic/VicLawRp+au/cases/vic/VicLawTLegO+au/cases/vic/VicWABWRp+au/cases/vic/VicWWABRp+au/cases/vic/VicWWRp+au/cases/vic/VicSC+au/cases/vic/VicAATRp+au/cases/vic/VBAB+au/cases/vic/VDPB+au/cases/vic/VHerCl+au/cases/vic/VMPB+au/cases/vic/VMPBPSP+au/cases/vic/VPrivCmr+au/cases/vic/VPYRB+au/cases/vic/VicPABRp+au/cases/vic/PPV+au/cases/vic/VPSRB+au/cases/vic/VCAT+au/cases/vic/aat+au/cases/vic/VADT+au/cases/vic/VCGLR+au/cases/vic/VDBT+au/cases/vic/VLSC+au/cases/vic/VLPT+au/cases/vic/VMHRB+au/cases/vic/VMHT+au/cases/vic/VRAT+au/legis/vic/consol_act+au/legis/vic/num_act+au/legis/vic/hist_act+au/legis/vic/reprint_act+au/legis/vic/anglican+au/legis/vic/repealed_act+au/legis/vic/consol_reg+au/legis/vic/num_reg+au/legis/vic/reprint_reg+au/legis/vic/repealed_reg+au/legis/vic/bill+au/legis/vic/bill_em+au/other/VicBillsRR+au/other/vic_gazette+au/other/VicOmbPRp+au/other/VicSARCAD+au/other/rulings/vicsro/VICSROBF+au/other/rulings/vicsro/VICSRODT+au/other/rulings/vicsro/VICSRODA+au/other/rulings/vicsro/VICSROFHOG+au/other/rulings/vicsro/VICSROFID+au/other/rulings/vicsro/VICSROGEN+au/other/rulings/vicsro/VICSROLT+au/other/rulings/vicsro/VICSROLTA+au/other/rulings/vicsro/VICSROPT+au/other/rulings/vicsro/VICSROPTA+au/other/rulings/vicsro/VICSROSD+au/other/rulings/vicsro/VICSROTAA" \l "fn2) and those addressing neighbourhood character.[[3]](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2017/920.html?context=1;query=zelezny;mask_path=au/cases/vic/VSC+au/cases/vic/VSCA+au/cases/vic/VicCorC+au/cases/vic/VCC+au/cases/vic/VMC+au/cases/vic/VicRp+au/cases/vic/VicLawRp+au/cases/vic/VicLawTLegO+au/cases/vic/VicWABWRp+au/cases/vic/VicWWABRp+au/cases/vic/VicWWRp+au/cases/vic/VicSC+au/cases/vic/VicAATRp+au/cases/vic/VBAB+au/cases/vic/VDPB+au/cases/vic/VHerCl+au/cases/vic/VMPB+au/cases/vic/VMPBPSP+au/cases/vic/VPrivCmr+au/cases/vic/VPYRB+au/cases/vic/VicPABRp+au/cases/vic/PPV+au/cases/vic/VPSRB+au/cases/vic/VCAT+au/cases/vic/aat+au/cases/vic/VADT+au/cases/vic/VCGLR+au/cases/vic/VDBT+au/cases/vic/VLSC+au/cases/vic/VLPT+au/cases/vic/VMHRB+au/cases/vic/VMHT+au/cases/vic/VRAT+au/legis/vic/consol_act+au/legis/vic/num_act+au/legis/vic/hist_act+au/legis/vic/reprint_act+au/legis/vic/anglican+au/legis/vic/repealed_act+au/legis/vic/consol_reg+au/legis/vic/num_reg+au/legis/vic/reprint_reg+au/legis/vic/repealed_reg+au/legis/vic/bill+au/legis/vic/bill_em+au/other/VicBillsRR+au/other/vic_gazette+au/other/VicOmbPRp+au/other/VicSARCAD+au/other/rulings/vicsro/VICSROBF+au/other/rulings/vicsro/VICSRODT+au/other/rulings/vicsro/VICSRODA+au/other/rulings/vicsro/VICSROFHOG+au/other/rulings/vicsro/VICSROFID+au/other/rulings/vicsro/VICSROGEN+au/other/rulings/vicsro/VICSROLT+au/other/rulings/vicsro/VICSROLTA+au/other/rulings/vicsro/VICSROPT+au/other/rulings/vicsro/VICSROPTA+au/other/rulings/vicsro/VICSROSD+au/other/rulings/vicsro/VICSROTAA" \l "fn3) These policies are not mutually exclusive. Having regard to its dimensions, proportions and site area, the land can accommodate two dwellings and include a single vehicle crossover and driveway, as demonstrated by other developments in the neighbourhood, including within Hilton Street itself.[[4]](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2017/920.html?context=1;query=zelezny;mask_path=au/cases/vic/VSC+au/cases/vic/VSCA+au/cases/vic/VicCorC+au/cases/vic/VCC+au/cases/vic/VMC+au/cases/vic/VicRp+au/cases/vic/VicLawRp+au/cases/vic/VicLawTLegO+au/cases/vic/VicWABWRp+au/cases/vic/VicWWABRp+au/cases/vic/VicWWRp+au/cases/vic/VicSC+au/cases/vic/VicAATRp+au/cases/vic/VBAB+au/cases/vic/VDPB+au/cases/vic/VHerCl+au/cases/vic/VMPB+au/cases/vic/VMPBPSP+au/cases/vic/VPrivCmr+au/cases/vic/VPYRB+au/cases/vic/VicPABRp+au/cases/vic/PPV+au/cases/vic/VPSRB+au/cases/vic/VCAT+au/cases/vic/aat+au/cases/vic/VADT+au/cases/vic/VCGLR+au/cases/vic/VDBT+au/cases/vic/VLSC+au/cases/vic/VLPT+au/cases/vic/VMHRB+au/cases/vic/VMHT+au/cases/vic/VRAT+au/legis/vic/consol_act+au/legis/vic/num_act+au/legis/vic/hist_act+au/legis/vic/reprint_act+au/legis/vic/anglican+au/legis/vic/repealed_act+au/legis/vic/consol_reg+au/legis/vic/num_reg+au/legis/vic/reprint_reg+au/legis/vic/repealed_reg+au/legis/vic/bill+au/legis/vic/bill_em+au/other/VicBillsRR+au/other/vic_gazette+au/other/VicOmbPRp+au/other/VicSARCAD+au/other/rulings/vicsro/VICSROBF+au/other/rulings/vicsro/VICSRODT+au/other/rulings/vicsro/VICSRODA+au/other/rulings/vicsro/VICSROFHOG+au/other/rulings/vicsro/VICSROFID+au/other/rulings/vicsro/VICSROGEN+au/other/rulings/vicsro/VICSROLT+au/other/rulings/vicsro/VICSROLTA+au/other/rulings/vicsro/VICSROPT+au/other/rulings/vicsro/VICSROPTA+au/other/rulings/vicsro/VICSROSD+au/other/rulings/vicsro/VICSROTAA" \l "fn4) An increased density can be achieved whilst complying with the policy. Having regard to policy, the characteristics of the site, and to the context, the provision of two crossovers is not justified.

1. It submitted that the review site in this case has an area of 543 square metres; is rectangular; is generally flat; has no easements; enjoys an east-west aspect; and is not encumbered by any overlays. According to the Council, the land can be developed in a manner where one dwelling is sited behind the other, albeit they would be smaller than what is proposed here.
2. The applicant referred to the Council’s *Monash Housing Strategy 2014* which places the review site and its surrounds in an ‘accessible area’. The vision for these areas is one of moderate housing change and diversification, serving as a transition between commercial and residential areas. Further, development is to be respectful of neighbourhood character and amenity, with greater emphasis being placed on these objectives in proportion to the distance from commercial zones and transport nodes. The vision for the ‘accessible areas’ was distinguished by the applicant from the ‘garden city suburbs’ which encompass most of the municipality’s residential areas, where more modest growth and diversification is sought, with an emphasis on preserving and enhancing the Garden City Character.[[4]](#footnote-4)
3. The applicant referred to the comments of the Tribunal in *Allan Armstrong & Associates v Monash CC*[[5]](#footnote-5)that a development proposal is the sum of its parts and “*an analysis of responsiveness to neighbourhood character is best approached in a holistic way, inputting numerous elements that make up the character of an area overall and focusing on those that are determinative of that character*”.[[6]](#footnote-6) The applicant observed that in George Street:
	* the tree canopy is derived primarily from trees in the road reserve
	* there is a lack of consistency of front fences
	* there are various architectural forms present
	* while older housing stock is set back from one side boundary, newer dwellings span much of the allotment width and sited to one side boundary with car parking structures being evident in the streetscape
	* the contribution of garages within the streetscape varies
	* there is reliance on the front setback area for parking.
4. Specifically addressing the policy within clause 22.01 in respect of vehicle crossings and car spaces, the applicant submitted:
	* there is no clear pattern of crossovers and the introduction of a second crossover will not fragment the streetscape
	* the width of the lot allows compliance with standard B14 at clause 55.03-9
	* the additional crossover will not result in the loss of either an on-street car space or a street tree.
5. In the applicant’s opinion, the recessed nature of the design and the asymmetrical design of the development will allow it to be read as a single built form. It was submitted that the reliance on the front setback for car parking is a characteristic of the street and that the significantly recessed nature of the Dwelling 2 garage will mean that the car parked in the driveway will be approximately in line with the dwelling. The applicant argued that the provision of paving in the front setback will not come at the expense of landscaping, stating that that outcome will be similar to other multi-dwelling developments. Positive elements were identified as being the 60 square metre garden space, the compliant front setback,[[7]](#footnote-7) the ability to plant canopy trees, and the provision of landscaping along the side of the driveways.
6. As I observed in *Zelezny*:

11 Clause 20.02 sets out the operation of the Planning Scheme’s Local Planning Policies. It states:

A Local Planning Policy (LPP) is a policy statement of intent or expectation. It states what the responsible authority will do in specified circumstances or the responsible authority’s expectation of what should happen. The LPP gives the responsible authority an opportunity to state its view of a planning issue and its intentions for an area. An LPP provides guidance to decision making on a day to day basis. It can help the community to understand how the responsible authority will consider a proposal. The consistent application of policy over time should achieve a desired outcome.

12 Departure from policies contained within the Planning Scheme without sufficient justification can incrementally erode the ability to achieve the expressed desired outcome. In the context of the policy at clause 22.01 and the character of the neighbourhood, I have not been persuaded that the provision of two crossovers and driveways is justified in this instance. Perpetuating what has occurred in the other two developments is contrary to the clearly expressed policy. Importantly, the Council has included the policy in the Planning Scheme. It is not within an extraneous document, which would, arguably, carry less weight. The implementation of policy is the first-stated purpose of the GRZ2. Policies contained within the Planning Scheme should be given meaningful expression.

1. The provision of two crossovers per lot is discouraged by policy. A departure from this clearly-stated policy position should only be permitted where there is good reason to do so. Having considered the parties’ submissions and undertaken an inspection of George Street and the wider neighbourhood, I am not persuaded that a departure from policy is justified in this instance.
2. I agree with the Council that, although there is a variety of dwelling styles evident, George Street is an almost intact streetscape in respect of the provision of one crossover per lot. There are no examples of side-by-side developments where two crossovers and associated driveways are constructed to the narrow boundary (frontage) of a lot. The pattern of development is of a single crossover and driveway extending along one side of the lot, with the balance of the front setback area devoted to garden space. As a consequence, there is a rhythm of development, and a clear presence of garden spaces visible from the public realm which reflect and contribute to the Garden City character which is repeatedly referenced in the Local Planning Policy Framework. This character is described as a ‘core value’ held by the City of Monash.[[8]](#footnote-8)
3. This is not a particularly wide lot. At 15.24 metres, it represents the conventional lot width for this neighbourhood. As a consequence, the driveways will occupy over 40% of the front setback area. In the context of a streetscape where driveways occupy approximately 20% - 25% of the front setback, this is not an insignificant amount. The impact on the development’s overall presentation in the streetscape will be noticeable and will appear as aberrant in its context. The departure from policy will have an evident and negative effect on the established character. Put simply, the design response in not in keeping with what already exists and will not contribute to the desired character expressed in policy.
4. My conclusions are based on the site and its context. This includes the established pattern of development, the almost uniform existence of one crossover per lot, the conventional width of the property, and the resultant appearance in the streetscape. There may be instances where the provision of two (or multiple) crossovers could represent an acceptable planning outcome based on the context and the particular circumstances of a site, however, this is not one of them.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

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| Bill Sibonis**Member** |  |  |

1. The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons. [↑](#footnote-ref-1)
2. Clauses 11.01-1S and 16.01-2S [↑](#footnote-ref-2)
3. [2017] VCAT 920 [↑](#footnote-ref-3)
4. The Council’s submission was that the site is at the edge of the accessible area, where there is a greater focus on achieving neighbourhood character outcomes than on lots closer to the commercial centre. [↑](#footnote-ref-4)
5. [2017] VCAT 486 [↑](#footnote-ref-5)
6. Paragraph 23 [↑](#footnote-ref-6)
7. The minimum 7.6 metre setback complies with the varied standard B6 in the schedule to the GRZ2. [↑](#footnote-ref-7)
8. Clause 21.01-3 [↑](#footnote-ref-8)