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| VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  planning and environment division | |
| planning and environment LIST | vcat reference No. P1707/2019  Permit Application no. TP440 |
| CATCHWORDS | |
| Section 149(1) *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone; Development Plan; Dwellings; Neighbourhood character; Tree retention; Amenity. | |

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| APPLICANT | Golf Road Project Development Pty Ltd |
| responsible authority | Monash City Council |
| SUBJECT LAND | 52 Golf Road, Oakleigh South |
| WHERE HELD | Melbourne |
| BEFORE | Bill Sibonis, Senior Member |
| HEARING TYPE | Hearing |
| DATEs OF HEARING | 2 and 3 March, 2020 |
| DATE OF ORDER | 5 May, 2020 |
| CITATION | Golf Road Project Development Pty Ltd v Monash CC [2020] VCAT 488 |

# Order

1. Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act 1998*, the development plan submitted pursuant to Schedule 5 of the Development Plan Overlay under the Monash Planning Scheme for endorsement to the satisfaction of the responsible authority is amended so as to comprise:
   * 52 Golf Road, Oakleigh South, Development Plan, Volume 1, February 2020, Revision 3
   * 52 Golf Road, Oakleigh South, Development Plan, Volume 2, February 2020, Revision 3 comprising:
     + Architectural Submission (Oakmont Oakleigh South, 52 Golf Road, Oakleigh South, for VCAT, No. 12737, Date: 3/02/20, Revision 2 (Architectural Statement, Urban Context & Site Analysis, Urban Integration & Response, Architecturals)
     + Landscape Plan for VCAT prepared by John Patrick Landscape Architects Pty Ltd, dated Jan 2020
     + *Arboricultural Report* prepared by Landscape Dept, dated June 2019
     + *Traffic Engineering Assessment* prepared by Traffix Group Pty Ltd, dated 3 February 2020
     + *Sustainable Management Plan* prepared by Sustainability House, dated 3 February 2020
     + *Property Servicing Report, Proposed Residential Development*, prepared by FMG Engineering, dated 24 May 2019
     + *Stormwater Management Plan,* prepared by FMG Engineering, dated 30 January 2020
     + *Waste Management Plan*, prepared by Sustainability House, dated 3 February 2020
     + *Site Development Management Plan*, prepared by Prensa, dated December 2018
     + *Review of Desktop Landfill Gas Investigation for 52 Golf Road, Oakleigh South, Victoria*, prepared by Prensa, dated 7 December 2018
2. In application P1707/2019 the decision of the responsible authority is affirmed. The development plan is not approved.

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| Bill Sibonis  **Senior Member** |  |  |

# Appearances

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| For Golf Road Project Development Pty Ltd | Mr P Bisset, Solicitor of Minter Ellison. Evidence was called from:   * Mr R Galbraith, Arboriculturalist of Galbraith and Associates * Mr J Patrick, Landscape Architect of John Patrick Landscape Architects Pty Ltd * Ms A Ring, Town Planner of SJB Planning Pty Ltd.   The written evidence of Ms C Dunstan, Traffic Engineer of Traffix Group Pty Ltd was tendered. Ms Dunstan was not called to give oral evidence. |
| For Monash City Council | Ms M Marshall, Solicitor of Maddocks Lawyers. |

# Information

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| Description of proposal | A development plan showing the development of the site for medium density housing comprising two-storey and three-storey attached dwellings. |
| Nature of proceeding | Application under section 149(1) of the *Planning and Environment Act 1987* to review the failure of the responsible authority to make a decision on the development plan. |
| Planning scheme | Monash Planning Scheme (**Planning Scheme**) |
| Zone and overlays | General Residential Zone – Schedule 1, General Residential Zone (**GRZ1**)  Development Plan Overlay – Schedule 5, Surplus Education Land (**DPO5**) |
| Key scheme policies and provisions | Cl. 11, 15, 16, 18, 19, 21, 22.01, 22.04, 22.13, 32.08, 43.04, 52.06, 55 and 65 |
| Land description | The subject land is the former site of the Oakleigh South Primary School, located on the north-east corner of Golf Road and Beryl Avenue, in Oakleigh South. The school occupied the property from the late 1950s to 2001. The former school buildings have been demolished and the land is now vacant. It is a large, irregular land holding, comprised of 13 lots, and has an area of approximately 1.826 hectares. It displays a 106.45 metre frontage to Golf Road, and sideages of 169.77 metres and 42.67 metres to Beryl Avenue and Bakers Road, respectively. Surrounding properties are developed in the form of single, detached dwellings. |
| Tribunal inspection | A site inspection has been undertaken. |

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

## What is this proceeding about?

1. This proceeding concerns an application to the Monash City Council (**Council**) for the approval of a development plan for the subject land. The development comprises sets of plans showing the proposed development of the property for medium density housing. A number of supporting documents including an Arboricultural Report, Traffic Engineering Assessment, Sustainable Management Plan and Waste Management Plan, amongst others, form part of the development plan.
2. The applicant made this application to the Tribunal as it considered that the Council did not make a decision on the development plan within a reasonable time.
3. Subsequent to the lodgement of this application, the Council considered the development plan and resolved to deny its support on grounds which refer to a failure to meet the requirements of the DPO5, neighbourhood character, the retention of existing vegetation, car parking arrangements, scale and density.
4. The amended development plan, which was substituted for the plan which formed part of the application when lodged, was considered by the Council and the Council maintained its opposition.
5. The Tribunal must decide whether the development plan should be approved. Having considered the submissions and the evidence, with regard to the relevant policies and provisions of the Planning Scheme, assisted by my inspection, I have determined to affirm the Council’s decision. My reasons follow.

## what does the development Plan show?

1. The development plan shows the development of the property for 90 dwellings, comprising two and three-storey attached houses. The dwellings are comprised of seven different typologies, providing two, three and four-bedroom accommodation. Of the 90 dwellings, 65 are to be two-storey, with the remaining 25 being three-storey. Each dwelling is to be provided with on-site car parking and private open space.
2. In addition to direct access from the adjoining streets for those dwellings fronting these, an internal two-way loop road is proposed. This connects to Golf Road and will provide access to the dwellings located within the site. A total of 12 visitor car spaces are shown in various locations along the internal road. Four pedestrian walkways connecting to the external footpath network are proposed. A communal open space area of approximately 1500 square metres is located in the centre of the site, and is to be flanked by two rows of dwellings with their outlook to this space. Several existing trees are to be retained throughout the site, including within the communal open space area.

## what does the DPO5 schedule require?

1. The DPO5 applies to ‘Surplus Education Land’ comprising four sites in the Monash municipality:
   * 1 Beryl Avenue, Oakleigh South – Oakleigh South Primary School
   * 1 Renver Road, Clayton – Monash Special Development School
   * 10 Alvina Street, Oakleigh South – Clayton West Primary School
   * 29 Browns Road, Clayton – Clayton Primary School
2. The subject land was formerly known as 1 Beryl Avenue, but is now described as 52 Golf Road. Clause 3.0 of the schedule sets out the requirements for the development plan. According to the clause, the development plan should be prepared for the whole site and, relevantly, should:

* Where residential uses are proposed, provide a range of dwelling types to cater for a variety of housing needs.
* Incorporate sustainable design features to address water and waste management, solar access and energy saving initiatives, to deliver lower living costs for future residents.
* Create a composition of varied building forms and heights across the site.
* Provide a high quality of internal amenity for future residents.
* Respect the amenity of adjoining interfaces for providing for a maximum of 2 storey built form adjacent to or opposite any existing single storey residential development.
* Any taller buildings across the balance of the site should be carefully graduated with reference to analysis of shadow, visual amenity impacts and the character of the area.
* Apply appropriate buffer treatments at the interface with any non-residential uses on adjoining properties.
* Create opportunities for improved local permeability through provision of new pedestrian/cycle pathways or new local street networks where appropriate.

1. The information which must be included in the development plan includes an existing conditions plan, concept plans (showing the site layout and use, building envelopes, design philosophy, shadow diagrams and development schedule), traffic management report and a landscaping plan. The landscaping plan is to show the landscape concept for the site and incorporate “*any significant vegetation including trees rated as ‘moderate’ or ‘high’ in the 2013 Tree Logic Assessment*”.
2. Specific to this site is a requirement for plans to implement the Site Development Management Plan developed by Prensa in their report dated August 2013. I was advised that this report has been updated and is now in the form of the *Site Development Management Plan* prepared by Prensa and dated December 2018.
3. A requirement that applies to this site and to the former Clayton West Primary School site is a risk assessment detailing the risk of landfill gas migration from nearby landfills. A risk assessment in accordance with this requirement has been prepared, details of which are provided in a later section of these reasons.
4. The decision guidelines which must be considered before deciding whether the development plan is satisfactory are detailed at clause 5.0 and are as follows:

* The provisions of this planning scheme including relevant local policies and the objectives set out in Clauses 54 and 55 of the scheme.
* The orderly development of land including management of traffic, car parking, the provision of pedestrian ways and open space.
* The overall objective for the land to achieve an integrated medium density residential development offering a choice and diversity of housing opportunities and types, appropriate to its setting and achieving a high quality of amenity and urban design.

## will the development represent an acceptable built form response?

1. The Council’s concerns regarding the development plan’s built form response to neighbourhood character is succinctly expressed in this extract of its submission:

64. In Council’s submission, the Development Plan does not have adequate or appropriate regard to the existing built form in the immediate surrounding area. The predominantly attached built form of the proposal is out of context with the established surrounding area which is dominated by detached dwellings, varied setbacks, well landscaped front gardens and traditional suburban form.

1. In summary, the Council is critical of the following elements of the built form response shown in the development plan:
   * the exclusively attached nature of the dwellings and the absence of any semi-detached or detached forms
   * the absence of single-storey dwellings to provide for the needs of an ageing population, and the failure to provide a range of housing typologies
   * the continuous attached built form extending along the interface with the secluded private open space at the rear of the residential properties to the north
   * the dominance of garages and accessways at the front of dwellings, facing both the adjoining roads and the proposed internal road
   * the provision of secluded private open space in the front setbacks to Golf Road and Beryl Avenue, in particular.
2. The decision guidelines at clause 5.0 of the DPO5 articulate the overall objective of the land to achieve an integrated medium density residential development. That development is to offer housing diversity, is to be appropriate to its setting and achieve a high quality of amenity and urban design. These outcomes are envisaged by policies, objectives and strategies at clauses 11.01-1R, 15.01-1S, 15.01-1R, 15.01-5S, 16.01-1S, 16.01-2S, 16.01-3S, 21.04 and 22.01, amongst others.
3. The objective of clause 15.01-1S is to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity. Related strategies include:

Require development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate.

Ensure the interface between the private and public realm protects and enhances personal safety.

1. Clause 15.01-2S has the objective of achieving building design outcomes that contribute positively to the local context and enhance the public realm. Included in the related strategies are the following:

Ensure development responds and contributes to the strategic and cultural context of its location.

Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.

Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.

Ensure buildings and their interfaces with the public realm support personal safety, perceptions of safety and property security.

1. With respect to neighbourhood character, clause 15.01-5S details the objective of recognising, supporting and protecting neighbourhood character, cultural identity, and sense of place. A strategy is to ensure development responds to cultural identity and contributes to existing or preferred neighbourhood character.
2. Clause 21.04 of the Municipal Strategic Statement (**MSS**) sets out the objectives and strategies for residential development. It refers to the *Monash Housing Strategy* 2014 (**Housing Strategy**), a Council-adopted document and a background document to the clause, that provides a residential development framework plan. The residential framework plan comprises eight categories that are classified according to their development potential as follows:

* Areas with future development potential
  + Category 1: Activity and neighbourhood centres
  + Category 2: Accessible areas
  + Category 3: Monash national employment cluster
  + Category 4: Boulevards
* Areas with limited development potential
  + Category 5: Heritage precincts
  + Category 6: Dandenong Creek escarpment
  + Category 7: Creek environs
* Areas suitable for incremental change
  + Category 8: Garden city suburbs

1. According to the ‘Residential development framework plan’ at clause 21.04-1, the review site is within an ‘Accessible area’ and is therefore in an area identified as having future development potential. As confirmed at the hearing, the Planning Scheme does not provide a definition of any of the housing change categories or any explanation of the level of change anticipated within each one. The Council advised that this information is provided in the Housing Strategy. For Accessible areas, the Housing Strategy provides the following details:

Objectives

Moderate housing change and diversification serving as a transition between commercial and residential areas.

Development will be respectful of neighbourhood character and amenity, with greater emphasis placed on these objectives in proportion to the distance from commercial zones and transport nodes.

Future character

The areas surrounding the centres will form a transition between the activity centres, which are intended to be areas of higher density development (residential and commercial), and the Garden City Suburbs (Category 7) which will continue to be occupied by more traditional forms of residential development.

These areas will provide for a diverse range of housing types while retaining key aspects of the existing built form and landscape character of the area. Improved building design and quality will be encouraged to maximise the comfort for future residents (and neighbours) as well as minimising running and maintenance costs.

Residential outcomes

Transition in residential density from the interface with surrounding residential areas to the boundary of the Activity Centre.

Lower density unit and townhouse style developments, at the interface with surrounding residential areas.

Potential for apartment development in context with the scale of development of the Activity Centre, at the interface with the Activity Centre subject to careful design.

On larger sites, in suitable locations, increased density may be appropriate, subject to careful design and the provision of appropriate landscaped setbacks.

1. The Residential Development and Character Policy at clause 22.01 applies to all residential land. Clause 22.01-4 provides the ‘preferred future character statements’. It was confirmed in submissions and evidence that the review is not within one of the ‘residential character types’. Accordingly, there is no applicable preferred future character statement for the site. This is distinct from the surrounding residential land, which is within the Garden City Suburbs (Southern) character type. As an understanding of the site’s context, the preferred future character for the Garden City Suburbs (Southern) is described as follows:

Modest dwellings with simple pitched rooflines and articulated facades will continue the prevailing development themes. On larger sites, low rise apartment development may be appropriate, provided the development is sited within generous open space, is well landscaped, retains the ‘open landscape character’ of the garden suburban setting and tapers down in scale to the boundaries of the site.

While the housing mix within this area will continue to evolve to meet the needs of the community, new development will complement the scale and siting of the original housing within the area. In doing so, it will enhance the generous spacious, open, landscaped character of the area.

This character area will be notable for its spacious garden settings, tall canopy trees, consistency in front setbacks and the maintenance of setbacks from at least one boundary and from the rear of the site. New dwellings will address the street and upper levels will be recessed and/or articulated to minimise the impression of building scale.

Front fences will be low to enable vegetation to be visible from the street, allow clear views of buildings and give the street an open quality. Fencing will complement the architecture of the building in design, colour and materials.

Existing mature trees and shrubs within properties should be retained and additional tree planting proposed to gradually create a tree canopy in the private domain, including at the rear of properties. This will create a visually permeable buffer between the house and street. The soft quality of the street that is derived from the wide nature strips and street tree planting will be maintained by ensuring that there is only one crossover per lot frontage.

Expanses of blank, or continuous walls will be avoided, particularly when adjacent to public parks or creating the appearance of a continuous building mass. The character of existing public open space within the area will be protected by ensuring that buildings directly adjacent are set back and buffered with planting that complements that within the public open space.

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

1. To be clear, this preferred future character statement does not apply to the review site. It applies to the area surrounding the review site. It is not a description of the character outcome which development on the review site is expected to achieve. It is description of the anticipated future character of the locality. Broadly, it is a contextual consideration in the assessment of whether the development will represent an acceptable response to the character of the neighbourhood within which is located.
2. The objectives of the policy include:

* To build upon the important contribution that landscaping makes to the garden city character of Monash.
* To encourage new development to achieve architectural and urban design outcomes that positively contribute to neighbourhood character having particular regard to the applicable preferred future character statement for the area.
* To encourage the provision of a variety of housing types to accommodate future housing needs and preferences.
* To achieve best practice environmentally sustainable development.

1. There was some question at the hearing as to whether the policy applies to the assessment of the proposal, given that no preferred future character statement is provided for the site. I am persuaded that the policy is relevant. The policy applies to all residential land. Further, one of the objectives is to encourage new development that positively contributes to neighbourhood character having particular (but not sole) regard to the applicable preferred future character statement for the area. Accordingly, the absence of a preferred future character statement does not mean that the objective of encouraging development to achieve architectural and urban design outcomes that positively contribute to neighbourhood character does not apply.
2. In addition, while it is policy to ensure that development is consistent with the preferred future character statement, the absence of such a statement does not mean that the remainder of the policies do not apply. As an example, the policy of respecting the character of surrounding development, including the maintenance of consistent setbacks, applies, regardless of there being a statement of preferred future character.
3. Lastly, the decision guidelines at clause 22.01-5 are:

It is policy that before deciding on an application, the responsible authority will consider, as appropriate:

* The applicable preferred future character statement.
* Whether the development will have an adverse impact on neighbourhood character.
* Whether the development will have an adverse impact on the amenity of adjoining properties.
* Whether the development will have an adverse impact on the environment.
* Whether the proposed development will be adversely affected by any adjacent industrial, commercial or trade activity.

1. By including the words ‘as appropriate’, the policy contemplates that there will be instances where consideration of the preferred future character statement would not be relevant or appropriate. A circumstance where there is no statement of preferred future character (as is the case here) is one such instance. The other decision guidelines must still be considered, as appropriate. This includes whether the development will have an adverse impact on neighbourhood character. The policy continues to apply in such circumstances.
2. Even if I am not correct in my interpretation of the policy’s applicability and relevance in the circumstances of the review site, a purpose of clause 43.04[[2]](#footnote-2) is to implement the Planning Policy Framework (**PPF**). The proposal’s response to neighbourhood character is a relevant consideration having regard to the policies and strategies at clause 15.01-1S, 15.01-2S and 15.01-5S of the PPF, detailed earlier.
3. Clause 22.01-3 sets out policy in respect of a number of neighbourhood character considerations and elements, including street setback, site coverage, permeability, landscaping, side and rear setbacks, private open space, fences, vehicle crossings, and built form and scale of development. I will refer to these, as relevant, below. Again, such considerations are relevant in the assessment against the PPF.

### Attached form

1. The Council opposes the attached built form of the proposal as it does not consider it to be in keeping with the pattern of development established by the detached houses which prevail in this neighbourhood. The applicant’s submissions and evidence were that the form and massing respond acceptably to the character of the neighbourhood by separating the dwellings into modules that provide a sense of space to reflect the rhythm of existing development. Attention was drawn to the guideline of DPO5 which identifies the overall objective of achieving an integrated medium density residential development offering a choice and diversity of housing opportunities and types. In this respect, the applicant referred to the findings of the Tribunal in *Spire Group Pty Ltd v Monash CC*[[3]](#footnote-3)

15 There is no doubt the medium density residential development that will result from this development plan will be of a different style, scale and character to the low scale post war residential neighbourhood surrounding the site, which is characterised by detached double fronted brick houses on regular shaped lots. However, this is an outcome which is intended by DPO5. It would be contrary to the overall objective for the land identified in the decision guidelines for DPO5 referred to above to refuse to endorse the development plan on this basis.

1. Having regard to this, I consider there is scope for attached dwellings on the site, provided the siting and design is respectful of the detached house context. In assessing the acceptability of the proposed development, the following policy at clause 22.01-3 is relevant:

* Respect the height, scale and massing of existing dwellings in the neighbourhood.
* Incorporate higher degrees of articulation for double storey development in streetscapes where the prevailing built form is single storey.
* Retain human scale, and by the inclusion of significant breaks and recesses in building massing, avoid large block like structures dominating the streetscape.
* Ensure buildings respect the built form, rhythm and proportion of existing dwellings in the neighbourhood.

1. A strategy of clause 15.01-2S is to minimise the detrimental impact of development on, amongst others, the public realm. Further, a strategy of clause 15.01-5S is to ensure development contributes to existing or preferred neighbourhood character.
2. The building module of four attached dwellings fronting Golf Road is flanked by substantial space comprising the accessway and the 9.0 metre setback to the proposed dwelling to the north, and the ‘community garden’ to the south. This is an acceptable response and sufficiently reflects the detached house pattern of development. This is similarly the case with the building module of three dwellings fronting Bakers Road. This group of dwellings abuts a communal open space area to its north, and has a 7.0 metre setback from Beryl Avenue. This provides a suitable separation to respect the context.
3. The presentation to Beryl Avenue is more problematic. Here, the development comprises a total of 19 dwellings which, with the exception of the centrally located 9.9 metre wide communal open space area, display minimal separation at the ground-floor level. While there is greater separation at the first-floor level, ranging between 3.9 metres and 5.5 metres, the overall outcome does not adequately acknowledge or respond to its surrounds. There will be no appreciation of the ground floor separation, except from directly opposite, or from the immediately adjoining footpath. Having regard to the design and massing of the dwellings, the separation between the building modules will not be sufficiently legible to be meaningful. I consider that an acceptable outcome could be achieved if a minimum 5.0 metre ground floor separation was provided between each of the building modules which face Beryl Avenue to response to the existing pattern of development on the opposite side of the street, and the wider neighbourhood.

### Fences

1. The Council submitted that the proposed provision of secluded private open space within the front setbacks for selected dwellings is not an acceptable neighbourhood character outcome. This is on the basis that high front fences are required in order to provide the necessary privacy to these areas.
2. The fence heights are shown as 1500mm-1700mm, tapering to a lower height adjacent to the front gates. The fence styles are nominated as palisade fences with landscaping behind, double-layer horizontal slat fencing, and angled vertical fencing.
3. Pursuant to clause 22.01-3, in respect of fences it is policy to (among others):

* Limit the height of front fences to:
  + Maintain the character of open streetscapes and low fencing patterns.
  + Retain views of the architecture of the building.
  + Ensure buildings address and connect to the street.
  + Facilitate passive surveillance and social interaction between the street, front yards and the dwelling.

1. A strategy of clause 15.01-1S is to ensure that the interface between the private and public realm protects and enhances personal safety. A strategy of clause 15.01-5S is to ensure buildings and their interfaces with the public realm support personal safety, perceptions of safety and property security. Objectives and strategies of both these clauses which seek to achieve acceptable neighbourhood character outcomes are also relevant.
2. The surrounding neighbourhood is characterised by low (or no) front fences. While there are some examples of taller fences, these are not common and do not prevail. The majority of properties have a front treatment which allows the front garden and the dwelling to be visible from the public realm. This is an evident characteristic of the area.
3. Within this context, the proposal does not represent an acceptable response. The fences will visually segregate the development from the footpath and street. They will detract from the open streetscapes and low fencing pattern. The fences will not facilitate passive surveillance and social interaction between the street, front yards and the dwellings. They are not consistent with policy with respect to neighbourhood character or the provision of an interface between the public and private realm that protects and enhances personal safety.
4. A different response is required. The open nature of the streetscapes of Golf Road and Beryl Avenue, in particular, should be respected. With a lesser number of dwellings along these interfaces, it should be possible to provide open front garden areas with no or low front fences, and secluded private open space areas to the rear or side of dwellings.
5. In respect of the dwellings extending along Beryl Avenue, such a re-design would also address the issue of solar access to the secluded private open space. The current design places the secluded private open space to the south of the dwellings, where it will be substantially impacted by shadow. This is demonstrated by the shadow diagrams for the equinox which form part of the development plan (including the 1.00pm shadow diagram provided by the applicant at the hearing).
6. A decision guideline of DPO5 is the objectives set out in clauses 54 and 55. The objective of clause 54.05-3 is to allow solar access into the secluded private open space of a new dwelling. The objective of clause 55.05-5 is to allow solar access into the secluded private open space of new dwellings and residential buildings.
7. The extent of overshadowing is unacceptable. The dimensions, size and orientation of the land provide sufficient scope for a design response that enables the dwellings fronting Beryl Avenue to receive sunlight to their secluded private open space.
8. The site is not so constrained that it justifies a design where secluded private open space is in the front setback area, where it manifests an undesirable neighbourhood character outcome due to the need for high fences, and is also subject to unacceptable overshadowing due to its location on the south side of the dwellings.
9. The applicant tabled an alternative dwelling design in response to the concerns regarding the placement of secluded private open space within the front setback areas. That design shows a ‘reverse living’ layout where the living area, two bedrooms and a bathroom are at first floor level and a further two bedrooms, en-suite and powder room are at the ground floor level. A balcony directly accessible from the living area is provided. This is located on the north side of the dwelling, where it will benefit from solar access. The setback to Beryl Avenue is annotated as secluded private open space, although, as I understand it, this space will not have a high front fence, given it will not function as the principal private open space for the dwelling.
10. While this option may be contemplated, one issue that requires further consideration and resolution is the sense of address, and access to, Beryl Avenue. The design ‘internalises’ the entry, placing it off the internal accessway. It is not clear how legible this will be to persons visiting the dwelling. A preferable outcome would be to have the entry to Beryl Avenue, being the immediately adjacent public realm from which persons would approach. As shown, the design presents the two bedrooms to the street and, although a pedestrian door is provided, this leads directly into one of these rooms and is not suitable for use by visitors, tradespersons and the like.

### Presentation of garages

1. The Council’s submission raised concerns regarding the presentation of streetscapes which are dominated by garages. The submission states:

89. The proposed dwellings fronting the internal road and backing onto Golf Road and Beryl Avenue will provide streetscape dominated by garages and accessway facades with upper storey massing. This is a consequence of the intensity of the development proposal, narrow dwelling width without breaks, rear loaded design and lack of integration of consideration of the built form of the proposal at street level [sic]. The dominance of garages, accessways and car parking is further exacerbated by limited opportunities for landscaping elements. Council submits that the lack of streetscape integration will provide a poor sense of address with no or limited opportunities for active or passive surveillance.

1. A requirement of the DPO5 is that the development plan should provide a high quality of internal amenity for future residents. There is nothing to indicate that this consideration is confined to the amenity which the dwellings themselves will provide for their occupants although this, of course, is relevant. It refers to the ‘development plan’ providing a high quality of internal amenity. In my view, the requirement can reasonably allow for a consideration of whether the development as a whole provides a high quality of amenity within the site itself, including the accessways and other areas utilised by residents.
2. I agree with the Council that there are areas of the proposed development that display a dominance of garages. This is particularly evident in the ‘bank’ of dwellings which interface with the golf course, located at the north-eastern boundary of the site. These dwellings have their ground level interface with the internal road comprised substantially of garages. The remainder of the ground floor façade is confined to a pedestrian door. There are no opportunities for active or passive surveillance, and a poor sense of address is provided for the dwellings. It is a utilitarian, inactive interface and is not an acceptable response. It does not support personal safety or perceptions of safety.
3. Similar criticisms can be made of the dwellings which extend adjacent to the northern side of the site. While there is a mix of designs, the majority have their ground level facades dominated by garages. Some attempt has been made to incorporate an opportunity for passive surveillance and to introduce a sense of activity through the inclusion of a window and a desk adjacent to the entry door. The extent to which this would be effective is questionable, given its comparatively limited width and resultant interface with the accessway (internal road). The greater portion of the ground floor is occupied by the garage. In contrast, selected dwellings have a ground floor bedroom in the façade, providing active and passive surveillance and an enhanced sense of address. A greater representation of this dwelling style should be incorporated, such that it is in the majority.

## is adequate Dwelling Diversity provided?

1. The neighbourhood is dominated by single detached housing dating from the 1950s and onwards. There is little presence of medium density housing. The development of the land in the form envisaged by the development plan will introduce a diversity of housing into this neighbourhood. The constituent dwellings comprise seven different formats and layouts. The variations include the number of bedrooms (with 2, 3 or 4 bedrooms), conventional layout with ground level living areas and open space, and ‘reverse living’ with upper level living areas and appurtenant balconies. Selected dwelling types also provide a ground floor bedroom and bathroom. With this variety of dwelling types, I am persuaded that the development provides opportunity to cater for the needs of the municipality’s population, which includes meeting the specific needs of the community as it ages and diversifies.

## will there. be any unacceptable amenity impacts?

1. The Council does not consider that the development will display an acceptable interface with the adjoining residential properties to the north. Its concern is that the dwellings proposed to extend along this interface will have an unacceptable visual impact due to their attached nature. While acknowledging that these dwellings will have a 6.0 – 7.5 metre setback from the common boundary with the neighbouring sites, the Council considers that there are ‘negligible recesses to the second storey or significant breaks between dwellings’. In the Council’s opinion, the resultant built form provides a dominating sheer wall when viewed from the adjoining properties to the north.
2. The evidence acknowledged the attached ground floor nature of these dwellings, but observed that this will not be perceptible from adjoining land. The existence of separation at the upper level was noted, and considered to be an acceptable response in the context of the medium density housing style of the development.
3. The design response is acceptable. The setbacks from the northern boundary provide a degree of separation which assists in minimising any presentation of visual bulk. This is as a consequence of the distance and the ability to plant trees in these setbacks which will screen and soften the appearance of the development as they mature. The ‘breaks’ at the upper level are of sufficient dimension to be legible, and will manifest a meaningful separation which will avoid the presentation of a continuous built form. It is also relevant that the dwellings will be confined to a two-storey height. This is an acceptable scale within this suburban environment and is consistent with the following requirement of the DPO5:

Respect the amenity of adjoining interfaces for providing for a maximum of 2 storey built form adjacent to or opposite any existing single storey residential development.

1. In combination, the setbacks from the northern boundary, the separation at the first-floor level, the opportunities for landscaping and the two-storey scale of the dwellings, are sufficient to ensure that unacceptable visual bulk is not presented.
2. Due to its location and the absence of any residential abuttals to the east, south and west, there will not be any unacceptable overshadowing.
3. Any overlooking from the proposed dwellings can be addressed by appropriate screening measures, which is a matter that can be considered as part of the planning permit process.

## is the proposed tree retention acceptable?

1. There is a total of 55 trees and one tree group on the land. These have been assessed over time by the arboricultural firms of TreeLogic,[[4]](#footnote-4) and Landscape DEPT,[[5]](#footnote-5) with the latter forming part of the development plan application. In his evidence statement, Mr Galbraith confirmed that he independently peer-reviewed the Landscape DEPT report and provided his own report in May 2019. He has since undertaken three site inspections to update the observations of the trees, with these observations being provided in a spreadsheet within his evidence.
2. In his assessment, Mr Galbraith assigned a ‘Worthiness of Retention (**WOR**)’ value to each of the trees, based on the following criteria:

structure, health, form and safe useful life expectancy

size, prominence in the landscape

species rarity

whether indigenous

whether an environmental weed

importance for habitat and wildlife

whether of historical or cultural interest.

1. In his evidence, Mr Galbraith provides the following explanation of the WOR:

Any tree with a WOR rating of 3 or less should be seriously considered for removal before development begins because it is dead, nearly dead, dangerous, a weed, is causing or is likely to cause a severe nuisance in the near future, or just of very little significance and readily replaceable with new plantings. Trees rated 4-6 are of some significance. Some of these trees may respond to treatments such as formative pruning, removal of dead wood, weight reduction pruning etc. Trees rated 7 or higher are of high significance (the higher the ranking the more so), primarily because of their good health, structure, form, prominence in the landscape and SULE, although all they still may need substantial works done on them as already detailed, if they are to be retained [sic].

1. The Officer’s report noted that the Council’s Arborist has assessed all the trees on the subject land identified for removal and recommended that seven of these trees be retained. These are Trees 2 (a Southern Mahogany), 8 (a Swamp Gum), 12 (a Silky Oak)[[6]](#footnote-6), 20 (a Sydney Blue Gum), 21 (a Southern Mahogany), 22 (a Spotted Gum) and 24 (a Southern Mahogany).
2. Mr Galbraith’s evidence responded to these recommendations. He agreed with the following assessment of the trees by the Council’s Arborist:
   * Tree 22: Fair Health and Fair Structure; Moderate Retention Value.[[7]](#footnote-7) Arguably the best specimen on this site in terms of overall good health, structure and little to no major issues. Should be retained.
   * Tree 24: Fair Health and Fair-Poor Structure. Large specimen. Reasonable condition overall, <85% LCR, deadwood >15%. Should be retained but remedial pruning should be completed.
3. However, Mr Galbraith does not consider that these trees necessarily have to be retained, particularly having regard to the proposed landscaping and tree re-establishment, but considers that they could be responsibly retained if desired. In respect of Tree 22, he stated that this tree has no major limb-shed history and could be retained but went on to note that this species may have a limb-shed problem ‘when they get big’. His evidence notes that Tree 24 has a branch failure history, scattered dieback, deadwood and possible decay in the main stem at 7.0 metres.
4. Regarding the remaining trees identified by the Council’s Arborist for retention (other than Tree 12), Mr Galbraith’s evidence states that any decision to retain Trees 2, 8, 20 and 21 would have to be considered ‘dubious at best’ and recommended that the trees be removed soon after the development is completed to avoid liability issues and re-plant.
5. In assessing Trees 2 and 20, being two of the largest trees on the land, Mr Galbraith made the following observations:

Tree 2

* over-mature; various large branch failures; the upper main stem has failed (ie has fractured and fallen); prominent ongoing limb shed history renders it of relatively low worth for retention in any residential development

Tree 20

* over-mature tree with prominent branch failure history and past dieback. Extensive tree surgery works required if retained to keep for short-medium term, including over residential property to the north. Canker rot present in the main fork at 1.5m and another at 7m. Three old thin cables approx. 30 years old in crown – must be replaced with much stronger cabling and higher up. Avoid building within 10m of trunk centre. Overall this is a dangerous tree to retain.

1. Mr Galbraith does not agree with the Council Arborist’s assessment of Tree 8 as 7/10, as he does not consider this takes into account the poor structure of the tree, which includes split-forking in the main stem. His evidence states ‘Basal V-crotch, with south-east facing stem collapsing towards road. The largest stem has repeated split-prone forks’. His rating is 3/10.
2. Lastly, Mr Galbraith regards the retention of Tree 21 as optional, with a WOR of 4, primarily because of its branch shedding history. His evidence states ‘Several large branch failures. High crown in part overhangs back yard of adjacent resident [sic] property. Leans north, branch shedder.’
3. I agree with Mr Galbraith’s assessment, which was tested in cross-examination. Based on the evidence, I have not been persuaded that the trees identified by the Council’s arborist should be retained. They have structural issues and/or a history of shedding limbs and/or shed major limbs when they become large, which render them unsuitable for retention within a medium density housing development.
4. Of the trees to be retained, Mr Galbraith identifies Tree 30 (Spotted Gum) as being the largest and most impressive tree on the site. It is 23 metres high and has been assessed as having fair/good form, fair health, fair/poor structure, and a WOR of 4 to 5. Mr Galbraith’s evidence provides the following comments regarding this tree:

Over-mature, heavy-branched tree with prominent branch shed history. Lesser stem leans heavily to SW. Tree surgery works are essential if retained. Avoid residential buildings within 14m south-west of centre, 12m west and 12m east.

1. In his oral evidence, Mr Galbraith stated that this tree is only suitable for retention for the short-to-medium term, citing 7 to 10 years. He noted that the tree needs to be monitored and needs pruning work. He went on to say that a decision will need to be made within seven years as to whether the tree is worthwhile or not, and that the tree is not a long-term proposition.
2. The assessment by Mr Galbraith does not provide me with sufficient confidence to conclude that the tree should be retained, notwithstanding its notable amenity value as a consequence of its size. The tree has a history of shedding limbs, requires tree surgery and the recommendation is that no buildings be placed within 12 - 14 metres to the west, south-west and east. Of concern is that the tree is to be within a communal open space area, which is likely to be frequented by residents for recreation and for accessing the dwellings which flank the space, in addition to traversing the site as pedestrians. Careful consideration should be given in any future development plan as to whether the tree is a suitable candidate for retention, having regard to the assessment.
3. Mr Patrick questioned the benefit of retaining Tree 29 (Prickly Leaved Paperbark) as he considers the prickly foliage is unfriendly to users of the communal open space area. He observed that the foliage is uncomfortable to walk or sit on. In his opinion, the retention is a lost opportunity to replace this tree with a new generation of planting that would be more suitable to its context within publicly accessible open space. I agree with Mr Patrick. To maximise the use of this communal open space area, the vegetation within it should be conducive to its intended use. Due to its foliage, Tree 29 is not one such tree. While the canopy can be pruned to a suitable height to avoid it being low enough to obstruct or cause nuisance to users, it is the shed foliage that can be problematic. The removal of this tree and its replacement with a more suitable species is the preferable outcome.

## landfill gas assessment

1. As detailed earlier, a requirement of the DPO5 is:

* For the former Clayton West Primary School and former Oakleigh South Primary School, where a sensitive use is proposed, (residential use, child care centre, pre-school centre or primary school) a risk assessment detailing the risk of landfill gas migration from nearby landfills must be undertaken. The risk assessment must be conducted by a suitably qualified professional, having regard to the EPA Publication 788.0 *Landfill Best Practice Environmental Management Guidelines, October 2010*, to the satisfaction of the responsible authority.

1. A *Desktop Landfill Gas Investigation, 1 Beryl Avenue, Oakleigh South, Victoria*’, was prepared by Prensa for the Department of Treasury and Finance in March 2014. That report stated:

Minimal historical information was available regarding the operation of a landfill at the former Cavanagh Sands property, with information generally suggesting the quarry was backfilled with inert material. Aerial photography indicated that a sand quarry may have operated at the Cavanagh Sands property as early as 1931. The Cavanagh Sands property was reported to have been filled with clean fill and has not been operational for twenty four (24) years, according to the information provided by EPAV and City of Monash. It was noted that the property has recently been developed into a homemaker centre, circa 2012 [sic].

EPA Publication 788.1 ‘*Siting, Design, Operation and Rehabilitation of Landfills*’, 2009, prescribes buffer distances to manage landfill gas impacts from closed landfills. The buffer distance [sic] are measured from the sensitive land use edge to the closest cell, or in the absence of knowledge of the cell location, the premise boundary is used as a point of measurement. Publication 788.1 indicates that a 200 m buffer should be maintained from buildings or structures for a minimum of 30 years post-closure, for landfills filled with solid inert waste. It is noted that at its closest point, the site is located approximately 200 m from the Cavanagh Sands property.

Based on the site history information obtained, the limited landfill gas monitoring undertaken and the distance from the Site to the Cavanagh Sand [sic] property, it is considered that the potential for landfill gas to be present at the Site, which would pose a potential health risk to future low density residential users of the Site is low.

1. In its conclusions the report stated the following:

A desktop review of the Cavanagh Sands quarry found that minimal information was publicly available regarding the use of the property as a landfill, information provided by EPAV and the City of Monash indicated that the property has been completely backfilled with inert material since 1990. The property has recently been redeveloped in a homemaker centre, circa 2012.

Limited landfill gas monitoring was undertaken by Prensa using a handheld landfill gas meter at the former Oakleigh South Primary School in January 2014. The monitoring reported non-detectable concentrations of methane at nine (9) locations sampled, which predominantly comprised stormwater drains, service pits and groundwater monitoring well [sic] at the Site.

In summary, the desktop landfill gas investigation identified that Cavanagh Sands was

* Used as a sand quarry;
* Backfilled with “*clean fill*” according to City of Monash and “*solid fill* – “*inert*” according to EPAV, following its closure;
* Rezoned from an Industrial 1 Zone (IN1Z) to a Business 3 Zone (B3Z), in accordance with the City of Monash planning scheme;
* Redeveloped into a “*Large Format Home Improvement Store and Supermarket*” circa 2012, in accordance with the rezoning information provided by City of Monash. The ‘Construction Environmental Management Plan’ prepared by Pellicano Builders (2011) for the redevelopment did not incorporate landfill gas collection or vapour mitigation systems, thereby indicating a low potential for LFG generation or migration.

Based on site history review and limited landfill gas monitoring undertaken it is considered unlikely that Cavanagh Sands was filled with putrescible wastes and the potential for landfill gas to be present at the Site, which would pose a potential health risk to future low density residential users of the Site is low.

1. A review of the 2014 *Desktop Landfill Gas Investigation, 1 Beryl Avenue, Oakleigh South, Victoria* was undertaken by Prensa in December 2018. The objective is noted as being to assess whether the landfill gas investigation previously completed by Prensa for the site is still relevant for assessing landfill gas migration that may pose a potential human health risk for future occupants and users of the site with regard to the proposed residential development. The report identifies the proposed future development as comprising residential townhouses with no basement levels, and notes that the review was requested to support a development plan application.
2. As with the earlier assessment, the review had regard to the age of the landfill which is the potential source of landfill gas (being 30 years),[[8]](#footnote-8) and the information which indicates that the landfill was backfilled with either clean fill or solid inert fill, both of which are identified as having a low potential for methane gas generation. In respect of a pathway to the subject land, the review report states:

* The distance of the Site from the Cavanagh Sands Quarry is approximately 200 m which is the buffer distance recommended for solid inert landfills.
* The geology at the Site has been identified as Quarternary aged high level alluvium, which is conducive to gas migration through the silty sand. The porous nature of the geology provides opportunity for vertical migration of the landfill gas rather than lateral migration (towards the Site).
* Underground services have the potential to create a preferential pathway from the former Cavanagh Sands Quarry towards or away from the Site. A sewer main identified to run between the former quarry and the Site would likely provide a preferential pathway for landfill gas migration (away from the Site).
* Groundwater monitoring previously completed at the Site (reference: Prensa, *Environmental Site Assessment*, August 2013) indicated that groundwater was shallow, with gauging data identifying groundwater between approximately 2.2 to 3.3 m below ground level. This limits the ability for landfill gas to migrate laterally in the subsurface soils; and
* Landfill gas monitoring undertaken by Prensa in 2014 from subsurface services and groundwater monitoring wells did not indicate the presence of landfill gas.

1. The Prensa report concludes that the risk of landfill gas migration occurring and causing an unacceptable human health or environmental impact on the proposed residential development is low, and that further landfill gas investigation is not considered warranted.
2. The Council accepted the findings of the assessment and was assisted in this by the fact that the assessments were undertaken by the same firm. There were no submissions or evidence to the contrary. The information available indicates that there is no unacceptable risk of landfill gas migration, and that no further investigation is necessary. That said, given the importance of this issue, I consider it would be prudent to refer the assessments to the Environment Protection Authority for its review and comment.

## Conclusion

1. For the reasons detailed above, the development plan is not approved.

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| Bill Sibonis  **Senior 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. Development Plan Overlay [↑](#footnote-ref-2)
3. [2017] VCAT 1435. That proceeding concerned the development of the Clayton West Primary School site, which is also affected by DPO5. [↑](#footnote-ref-3)
4. *Arboricultural Assessment 1-17 Beryl Ave, Oakleigh South, Former Oakleigh South Primary School,* prepared by Bruce Callendar, dated 22/04/2013 [↑](#footnote-ref-4)
5. *Arboricultural Report, 52 Golf Road, Oakleigh South*, prepared by Sean Gentry, Consultant Arborist, dated June 2018 [↑](#footnote-ref-5)
6. Tree 12 is shown as being retained on the development plan, within the proposed open space link which connects to Beryl Avenue. [↑](#footnote-ref-6)
7. Mr Galbraith assigned this tree a WOR of 6. [↑](#footnote-ref-7)
8. The report states that the key period of landfill gas production is generally within 30 years of waste placement and, as such, the likelihood of sites producing significant quantities of landfill gas that may migrate to the development site is diminished and likely to be low. [↑](#footnote-ref-8)