 VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P11495/2021  Permit Application no. TPA/52087 |

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| **Joint Applicant** | Abdul Shafeel and Caterina Cassar |

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| **Responsible Authority** | Monash City Council |

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| SUBJECT LAND | 11 Gordon Avenue  OAKLEIGH EAST VIC 3166 |

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| HEARING TYPE | Hearing |

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| DATE OF HEARING | 11 February 2022 |

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| DATE OF ORDER | 21 February 2022 |

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| CITATION | Shafeel v Monash CC [2022] VCAT 185 |

# Order

### Amend permit application

1. Pursuant to 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: | Architecton |
| * Drawing numbers: | 0.01, 4.01, TP2-001, TP2-002, TP2-003, TP2-004, TP2-005, TP5-001, TP6-001, TP6002, TP11-001, TP11-002, TP11-003 |
| * Revision | Issue I Issued for VCAT |
| * Dated: | 12.21 |

### No permit granted

1. In application P11495/2021 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/52087 no permit is granted.

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| Sarah McDonald  **Member** |  |  |



# Appearances

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| For applicants | Jordan Wright, of Counsel, instructed by Nickas Legal  He called the following witnesses:   * Andrea Pagliaro, Director, Urbis. |
| For responsible authority | Sally Moser, Principal Planner/Appeals Advisor, Monash City Council. |

# Information

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| Description of proposal | Construction of three, double storey 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 3 (GRZ3) |
| Permit requirements | Clause 32.08-6: To construct two or more dwellings on a lot in the GRZ3. |
| Land description | The review site is on the western side of Gordon Avenue, between Albany Road (to the north) and Lawson Street (to the south).  The site is rectangular, with a frontage width of 16.7 metres, a depth of 50.29 metres, and an overall area of 843 square metres. |

# Oral reasons were delivered after the conclusion of the hearing. The following is a written record of those reasons.

## What is this proceeding about?

### The application

1. Abdul Shafeel and Caterina Cassar are seeking a planning permit to construct three dwellings on the land at 11 Gordon Avenue, Oakleigh East.
2. The proposed dwellings are arranged down the length of the land. Dwelling 1 is to face and have its pedestrian and vehicle access from Gordon Avenue. Dwellings 2 and 3 are to face and have their pedestrian and vehicle access from a shared accessway that is to extend along the southern side of the site. Dwelling 1 is to have a separate vehicle access along the northern side of the site. All three dwellings are two storeys. The building form is attached at ground floor level, with the upper levels between each dwelling separated from each other.
3. The Monash City Council has refused to grant a planning permit for the proposal.
4. The Council’s grounds of refusal relate to:

* neighbourhood character;
* failure to meet various objectives of clause 55;
* site responsive design; and
* overdevelopment.

1. The clause 55 matters included in the grounds of refusal relate to neighbourhood character, integration with the street, safety, landscaping, parking location, side and rear setbacks, walls on boundaries, north facing windows, overshadowing, dwelling entry, private open space, storage, design detail, and site services.
2. Mr Shafeel and Ms Cassar sought this review of the Council’s decision under section 77 of the *Planning and Environment* Act 1987. Their ground for review is that the proposal responds appropriately to the relevant provisions of the Monash Planning Scheme.
3. At the hearing amended plans were substituted for the permit application plans. The amendments to the plans make changes to the detailed design of the proposed dwellings, rather than significantly altering the overall siting and design of the proposal.
4. My decision is based on the amended plans.
5. The submissions for the applicants include that the amended proposal:

* has strong policy support;
* is consistent with the objectives of the GRZ and relevant planning policies and provisions;
* meets or satisfies relevant provisions of clause 55;
* will not have any unreasonable impacts on the character or amenity; and
* is an acceptable planning outcome.

1. In support of their application and submissions, the applicants rely on:

* the town planning evidence of Mr Andrea Pagliaro;
* a landscape plan prepared by Etched; and
* and assessment of vehicle access arrangements by Amber Organisation.

1. Despite the amendments to the plans, Council still opposes the proposal.
2. The Council agrees that the review site is suitable for redevelopment for multiple dwellings. However, it submits that the proposal presents significant issues that directly impact the ability for the proposal to produce a satisfactory response for the site given its context and location.
3. As a result of the amendments to the plans, however, the Council’s concerns regarding the side and rear setbacks and north facing windows have been addressed.
4. Although one objection to the permit application was received by the Council that objection was subsequently withdrawn, and there are no respondents to this application for review.
5. The Tribunal must decide whether a permit should be granted, and if so, what conditions should be applied.

## Relevant facts of the case

1. In reaching my decision I have considered:

* the submissions and evidence of the parties;
* the supporting exhibits given at the hearing;
* the statements of grounds filed;
* the relevant policies and provisions of the planning scheme; and
* all the relevant matters as directed under of the *Planning and Environment Act 1987*.

1. In accordance with the practice of the Tribunal I will not cite or refer to all this material in my reasons.
2. I have been provided with a detailed description of the review site and its environs, the proposal, and the relevant planning scheme policies and provisions. It is not necessary for me to repeat that material other than to record the following:
3. The review site and surrounding area is zoned General Residential Zone – Schedule 3 (GRZ3)
4. The GRZ3 schedule applies to ‘Garden City Suburbs’ areas.
5. Under the GRZ3, the proposal:
   * must provide a minimum garden area of 35% of the site;[[1]](#footnote-2)
   * must meet the requirements of clause 55;[[2]](#footnote-3) and
   * must not exceed the mandatory maximum building height of 11 metres and three storeys.[[3]](#footnote-4)
6. The GRZ3 schedule includes ‘neighbourhood character objectives’, decision guidelines, and variations to clause 55 standards.
7. The variations to the clause 55 standards are to standard B6 minimum street setback, standard B8 site coverage, standard B9 permeability, standard B13 landscaping, standard B17 side and rear setbacks, standard B28 private open space, and standard B32 front fence height.
8. No overlays apply to the land.
9. Local planning policies relevant to the key issues in dispute include:
   * Clause 21.04 Residential Development strategic statement;
   * Clause 22.01 Residential Development and Character Policy.
10. Both clauses 21.04 and 22.01 seek to ensure that the ‘garden city character’ within residential areas is maintained and enhanced.
11. Under the Residential Development strategic statement at clause 21.04 the review site is in an area identified for ‘incremental change’.
12. The Residential Development and Character Policy at clause 22.01 includes objectives,[[4]](#footnote-5) policies around key character elements,[[5]](#footnote-6) and preferred character statements for the different residential character types.
13. The review site is within the ‘Garden City Suburbs (southern)’ neighbourhood character type area.[[6]](#footnote-7)
14. The preferred character for the Garden City Suburbs (southern) area includes:

…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…

…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…[[7]](#footnote-8)

1. The Car Parking provisions at clause 52.06 set out the number of car parking spaces required to be provided for the dwellings, and the design standards to be met.
2. Clause 65 requires me to consider whether the proposal will produce ‘acceptable outcomes’ in terms of the decision guidelines of that clause. These decision guidelines include, among other things, the Municipal Planning Strategy and the Planning Policy Framework, the purpose of and any matter required to be considered in the zone, or other provision, the orderly planning of the area, and the effect on the amenity of the area.
3. I have not undertaken a view of the review site and surrounding area. However, I have been provided with a range of photographs, aerial photographs, and plans which enable me to arrive at a decision about the matters in dispute.

## What are the key issues?

1. There is no dispute between the parties that the relevant planning policies and zone provisions support a multi-dwelling development on the site. Nor does the Council dispute the capacity for the site to accommodate three dwellings.
2. Rather, the key issues with this proposal relate to how the design of the proposal responds to the planning and physical context of the site.
3. Based on the submissions and relevant policies and provisions of the planning scheme, I consider the key issues to be determined relate to:

* the siting and design of the double storey form in relation to neighbourhood character and site context;
* the proposed landscaping response;
* the acceptability of dwelling entry, safety and integration with the street;
* the acceptability of the private open space for dwelling 2;
* the overshadowing impacts on the secluded private open spaces of the dwellings at 13 Gordon Avenue (to the south); and
* the acceptability of the car parking arrangements for dwelling 3.

## What are my findings?

### The siting and design of the double storey form in relation to neighbourhood character and site context

1. As relevant to these matters:
2. The neighbourhood character objectives of the GRZ3 seek:

To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.[[8]](#footnote-9)

1. The Residential Development and Character policies at clause 22.01-3 seek to:
   * Respect the character of surrounding development, including the maintenance of consistent setbacks.
   * Minimise the impact of the scale and massing of development.
   * Respect the height, scale and massing of existing dwellings in the neighbourhood.
   * Ensure taller buildings incorporate sufficient articulation, including recessed upper levels, to respect the prevailing scale of the adjoining dwellings and 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.

and

* + Ensure buildings respect the built form, rhythm and proportions of existing dwellings in the neighbourhood.

1. The preferred character statement for the Garden City Suburbs (Southern) areas includes:
   * Modest dwellings with simple pitched rooflines and articulated facades will continue the prevailing development themes.
   * …new development will complement the scale and siting of the original housing within the area.

and

* + …upper levels will be recessed and/or articulated to minimise the impression of building scale.

1. I agree with the submissions and evidence for the applicants that the character of this area has been evolving, with the original single storey housing stock being replaced with multi-dwelling developments, and that the area is characterised by a mix of single and double storey dwellings.
2. In this context I am not concerned with the double storey form of the proposed dwellings, in principle. The two storey height of the proposed dwellings, with a maximum height of 7.95 metres, is less than the maximum building heights allowed for under the provisions of the GRZ3.
3. Rather, the key issue relates to the detailed siting and design of the double storey elements of the three proposed dwellings.
4. Although there are some examples of double storey dwellings within this section of Gordon Avenue, between Albany Road and Lawson Street, the prevailing streetscape character is of single storey dwellings, including the properties either side of the review site.
5. The extent and scale of upper floor levels of this proposal is substantial relative to the ground floor levels of the dwellings. The upper floor levels of each of the dwellings is large, comprising multiple bedrooms and bathrooms, and rumpus rooms (in the case of dwellings 1 and 3).
6. The upper floor levels are not recessive elements relative to the ground floor levels. Rather, they have no or minimal setbacks from the ground floor level below, or otherwise cantilever over the ground floor level below.
7. The cantilevered upper floor levels of dwellings 1 and 2 will present a substantial upper floor building mass along the southern side shared accessway and across the front facade.
8. The southern side elevations of the dwellings in particular feature little articulation, at either ground floor or upper levels. This is due to the long sections of single wall planes mostly in a single building material/finish, and with limited window fenestration. This is particularly so of dwelling 1 which will be the most prominent dwelling when viewed from the street.
9. Despite Mr Pagliaro’s evidence to the contrary, I am not satisfied that the separation between the upper levels of dwellings 1 and 2 will be readily evident in views from the street. Rather, given its position some 20 metres back from the street frontage and the cantilevered section of dwelling 2 extending further than that of dwelling 1, I am of the view that the separation between these dwellings will do little, if anything, to visually break up the appearance of the mass of the upper floor levels of dwellings 1 and 2.
10. Even with the 9 metre setback of the upper floor level of dwelling 1 from the street boundary, I consider these will be highly visible elements from the public realm and the adjoining properties to the south. This is due to the low scale, single storey building forms along the western side of Gordon Avenue, including the dwellings on the adjoining properties, and the minimal vegetation and canopy trees along this side of the streetscape.
11. The overall effect of the siting and design of the double storey building forms is of large, boxy buildings across the frontage and down the length of the site.
12. In this context I am not persuaded by the submissions for the applicant that the “development will sit very comfortably alongside the immediate single storey neighbours…”.[[9]](#footnote-10)
13. Nor am I persuaded by Mr Pagliaro’s evidence that “…the proposed design is responsive to the existing and emerging character”.[[10]](#footnote-11)
14. Rather, I agree with the Council that the proposal will be a jarring building form within the Gordon Avenue streetscape and character.
15. For these reasons I am not satisfied that the proposal will:
16. Minimise the impact of the scale and massing of development;
17. Respect the height, scale and massing of existing dwellings in the neighbourhood; or
18. Ensure the buildings respect the built form, rhythm and proportions of existing dwellings in the neighbourhood;

as sought by the policies of the Residential Development and Character policy at clause 22.01.

1. Nor will the proposal:
2. Continue the prevailing development theme of ‘modest dwellings’;
3. ‘complement the scale and siting of the original housing within the area’; or
4. have ‘upper levels … recessed and/or articulated to minimise the impression of building scale’.

as sought by the preferred character statement at clause 22.01.

1. I am not persuaded that the newer, double storey developments in the broader surrounding areas, such as those along Lawson and Macrina Streets, provide support for this proposal on the review site. Many of those examples are on corner sites, rather than ‘mid-block’ sites such as the review site. Typically the detailed design of those examples includes upper floors set back from their ground floor levels, staggered facade setbacks, and articulated facades incorporating variations in materials, finishes, colour and window fenestration. Nor do those other examples include upper storeys that cantilever over the ground floor levels below.
2. I also note that, given the extent of multi-dwelling developments that have already occurred in this section of Gordon Avenue, the extent to which the character of this section of the street will continue to evolve is relatively limited.
3. My findings on the matter of the siting and design of the double storey form should not be interpreted to mean that the proposed dwelling 1 could not be double storey. Rather, a more nuanced design response is required to minimise the impact of the scale and massing of the dwellings within its context.

### The proposed landscaping response

1. As relevant to the matter of the proposed landscaping response:
2. The neighbourhood character objectives of the GRZ3 seek:

To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.

To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.

1. The Residential Development and Character policy at clause 22.01-3 seeks to:
   * Preserve and enhance the treed character of Monash.
   * Provide sufficient and well located private open space, primarily unencumbered by easements, to provide for vegetation and large trees to be retained or planted within front, side and rear setbacks and secluded open space areas. …
   * Retain or plant canopy trees, particularly within front setbacks to soften the appearance of the built form and contribute to the landscape character of the area.
   * Retain or plant canopy trees in rear setbacks to screen built form from adjoining backyards and any surrounding creek environs and contribute to garden character.
2. The preferred character statement for the Garden City Suburbs (Southern) areas includes:
   * This character area will be notable for its spacious garden settings, tall canopy trees, consistency in front setbacks…
   * 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.
   * … 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.
3. I agree with the submissions for the applicants that “the landscaped setting is generally modest along this street”. In this context I do not, in principle, take issue with the potential for the site to provide an acceptable landscaping response.
4. I am satisfied that the proposal not only provides landscaping in accordance with the variation to the landscaping standard B13 under the GRZ3 schedule, but well in excess of the minimum number of canopy trees required. Overall, I am satisfied that the proposal will improve the landscaping outcome on the review site compared to its current limited contribution.
5. However, I do have concerns about the detail design of the landscaping response. These concerns include:
6. The extent of paving across the front setback area of dwelling 1, through the combination of two vehicle accessways, and front paths within the front setback, and the bin and service metres, which fragments the front setback into a series of narrow strips and a small patch of landscaping.
7. Within the streetscape context the proposal relies heavily on the patch of intensely planted landscaping and cluster of canopy trees proposed in the front setback of dwelling 1.
8. The 1.2 metre high brick fencing across the street boundary limits the contribution the lower level landscaping within the front setback will make to the streetscape character – which is predominated by low level fences and visible front gardens.
9. The siting of the tandem car parking space of dwelling 3 in the south-west corner of the site, removes the opportunity for landscaping, and particularly a canopy tree, at the interface with the private open space areas at the rear of dwellings on adjoining properties to the south and south-west.
10. The provision of two vehicle crossovers across the street frontage does not assist in providing the sense of a ‘spacious garden setting’ sought for this area. However, I am satisfied the proposal to plant a canopy tree within the garden bed between the accessway and the front path to dwelling 1 will extend the canopy tree planting across the front setback area, thereby giving the impression of a spacious garden.
11. Some of the issues with the landscaping may be resolvable through providing an alternative fence design to improve the visibility of the front garden area, relocating the bin storage area and service meters (where possible). The front path to dwelling 1 is unnecessarily wide (approximately 1.5 metres) and could be narrowed to increase the width of the landscaping strip between the path and the driveway.
12. I also consider the width of the garden beds along both the northern and southern side boundaries to the front of dwelling 1 may also be able to accommodate taller shrubs or even a canopy tree, rather than the grasses, ground covers, and climbing plants, indicated in the landscape plan.
13. Such changes may off-set the negative impacts of the extent of paving across the frontage, to provide the visually permeable buffer between the house and the street, and to achieve the ‘soft quality’ of the street sought by the preferred character statement.
14. However, the issue with the lack of landscaping in the south west corner of the site is not resolvable in this proposal due to the need to provide a second car parking space for dwelling 3 which is a three bedroom dwelling.

### The acceptability of dwelling entry, safety & integration with the street

1. The Safety objective at clause 55.03-7 seeks ‘To ensure the layout of development provides for the safety and security of residents and property’.
2. The Dwelling entry objective at clause 55.05-2 seeks ‘To provide each dwelling or residential building with its own sense of identity’.
3. None of the proposed dwellings provide opportunities for visibility and surveillance along the shared accessway. This is due to the lack of any dwelling windows providing an outlook to the accessway or dwelling entries to dwellings 2 and 3 from inside the dwellings.
4. The entries to dwellings 2 and 3 are through an alcove for dwelling 2 and a ‘door in a wall’ for dwellings 3. In my view they lack a clear sense of identity.
5. In effect, at ground level the dwellings substantially present as a continuous brick wall along the length of the shared accessway, with only a few highlight windows, and the entry alcove and entry door to dwellings 2 and 3.
6. I am not persuaded by Mr Pagliaro’s evidence that providing strips of different patterned paving across the driveway to identify the dwelling entries to these dwellings will provide an acceptable sense of identity and personal address for these dwellings.
7. Nor am I persuaded that the issue of safety and surveillance of the shared accessway can simply be resolved by providing lighting along the accessway and /or lowering the sill heights of some of the windows in the southern walls of dwellings 1 and 2.
8. The provision of lighting might be a complementary element, but is not an acceptable substitute for a design response that provides opportunities for passive surveillance of this space and the dwelling entries from within the dwellings.
9. Nor is lowering the sill heights of windows an ‘easy fix’ for this issue. Three of the five windows are to either powder rooms or a laundry, which do not provide meaningful opportunities for passive surveillance. While two of these windows are to the living room of dwelling 1, lowering their sill heights will result in these windows not complying with the Parking location objective at clause 55.03-10 and associated Standard B15, which would require the windows to be set back 1.5 metres from the accessway.
10. For these reasons, I am not satisfied the proposal provides an acceptable response to either the Safety objective or the Dwelling entry objective at clause 55.
11. Overall, I find the interface of the dwellings and dwelling entries along the shared accessway is poorly resolved and will not provide an acceptable amenity or safety for future occupants.

### The acceptability of the private open space for dwelling 2

1. The ‘Private open space objective’ at clause 55.05-4 seeks ‘To provide adequate private open space for the reasonable recreation and service needs of residents’. One of the associated decision guidelines requires me to consider ‘The useability of the private open space, including its size and accessibility’.
2. I am not satisfied that the arrangement of the private open space for dwelling 2 provides an acceptable functional or accessible layout. Part of the open space area for dwelling 2 includes the 1.5 metre wide northern side boundary setback of dwelling 3. The location of the stormwater storage tank at the end of this space is illogical and unnecessary, given its substantial distance from the roof area of dwelling 2 from which the stormwater is presumably to be collected. It also results in the vast majority of this space providing no purpose other than as access to the tank.
3. I am however satisfied that the water tank could be relocated and the boundary between the private open spaces for dwellings 2 and 3 realigned to reallocate the space to the north side of dwelling 3 to that dwelling’s open space area. This would provide an opportunity for windows to be located in the northern wall of that dwelling with an outlook to this space, which could include landscaping to further enhance the landscape outcome.
4. Even though dwelling 2 would have less private open space than the minimum required under the local variation to private open space standard B28, it will be provided with the required area of secluded private open space, and will not reduce the total amount of open space provided across the development.

### The overshadowing impacts on the secluded private open spaces of the dwellings at 13 Gordon Avenue

1. There is no dispute that the proposal does not comply with the requirements of standard B21 at clause 55.04-5 regarding overshadowing open space. The proposal will cast additional shadows on the secluded private open space areas of the dwellings at 13 and 2/13 Gordon Avenue.
2. Mr Pagliaro’s evidence is that the additional overshadowing occurs to the side service and clothesline areas, rather than the recreational/useable open spaces of the those adjoining properties.
3. The overshadowing diagrams in the amended plans provide insufficient information to demonstrate the full extent of the overshadowing of the secluded private open space areas of these adjoining dwellings. There are no shadow diagrams for 11.00am and 1.00pm. The shadow diagrams for 2.00pm and 3.00pm do not show the extent of the existing shadows cast by fences along the western side of these spaces.
4. It is therefore unclear how many hours each of these open space areas will receive the minimum 40 square metres of sunlight required under standard B21. In the absence of this information I am not persuaded by the submissions and evidence for the applicants that the additional overshadowing is acceptable.
5. Nor am I persuaded that the overshadowing only impacts side service areas and clotheslines of the adjoining dwellings. Some of the additional overshadowing occurs at the northern ends of the private open space areas to the rear of the adjoining dwellings. While there is a clothesline at the northern end of the rear yard of 13 Gordon Avenue, this does not persuade me that the space under and around the clothesline is not usable open space. Indeed, it is in the area that appears to receive direct sunlight throughout the day. The area further to the south, although closer to the rear door access into the dwelling, is impacted by existing shadows.
6. The fact that the owners or occupiers of the adjoining dwellings did not object to the application does not persuade me that the impacts on the amenity of their open space areas as a result of the additional shadowing will be acceptable. Those owners/occupiers have not had the benefit of seeing the extent of shadow information now available to the Tribunal, albeit still incomplete. In any case, neither they nor the Tribunal, have the benefit of a complete and accurate set of shadow diagrams to show the full extent of the impacts of this proposal.
7. On the information available, I cannot find that the overshadowing impacts are acceptable.
8. I also note that the additional overshadowing does not arise from the review site being constrained. The site is a regular shape with reasonable dimensions and is capable of accommodating a proposal that does not have an unacceptable overshadowing impact on the adjoining properties.

### The acceptability of the car parking arrangements for dwelling 3

1. I am not persuaded that the car parking arrangements for dwelling 3 provide an acceptable response to the objectives, design standards and decision guidelines of the Car parking provisions at clause 52.06.
2. I am not satisfied that the tandem car parking space at the rear of the garage provides acceptable clearance either side in accordance with Design standard 2 and Diagram 1 at clause 52.06-9.
3. Despite the assurances of Mr Wright that the proposal is designed to comply with the relevant Australian Standard, I have not been provided with the details of the relevant standard nor does the correspondence from Amber Consulting, on which the applicants rely, go to the matter of clearance space either side of the tandem car parking space.
4. While the shed and bin storage area currently shown alongside the car space may be able to be relocated to provide the clearance required, this may have implications for the proposal’s compliance with the minimum garden area required under clause 32.08-4. The proposal is currently only just compliant with the minimum 35% garden area required. Even very minor changes to the arrangement of this car parking space could result in the proposal not complying with the minimum car parking requirement.
5. The relocation of the shed and bin storage area may also have implications for the extent and nature of the proposed landscaping elsewhere in the private open space area of dwelling 3.
6. If the option of deleting the proposed garden shed was adopted I would not be satisfied that the ‘high cabinet’ storage in the garage provides an acceptable substitute. The high cabinet storage requires a minimum clearance height of 2.1m above the floor level of the garage. While this may be suitable for some storage requirements, I am not satisfied it would provide convenient or readily accessible storage. Nor does it appear to be of sufficient dimensions to meet the minimum 6 cubic metre area for storage required by standard B30 at clause 55.05-6.

### Are there any other issues?

1. While other issues with the proposal have been raised, I am satisfied that these are not determinative as to whether a planning permit should be issued. As such I will not elaborate my findings on these.
2. I do note however that I do not have concerns about the proximity of the proposed vehicle crossover to the shared accessway along the southern side of the site to the existing street tree within the nature strip. The street tree is a very small, immature tree, and correspondingly will have a proportionately small tree protection zone area.
3. The Council has not persuaded me that the location of the proposed crossover 1.2 metres from the trunk of that tree would result in an unacceptable encroachment into the existing tree protection zone of this tree. Nor has the Council persuaded me that the location of the crossover in this location would have unacceptable long term implications for the growth and health of that tree. The tree would have the benefit of an approximately 8.5 metre long nature strip that would remain if this second crossover was constructed.

## Conclusion

1. Each of the issues with this proposal on their own may not warrant finding that the proposal overall is not acceptable. However, in combination they result in a design response that I find to be unacceptable.
2. Based on my findings, it appears that this proposal prioritises maximising the size of the proposed dwellings at the expense of acceptable neighbourhood character and detailed design outcomes. The proposed design has been pushed to the margins of compliance with a number of the policies and provisions, with the result that overall it does not provide an acceptable outcome.
3. I have considered whether the issues can be addressed through amendments to the plans that could be required either by permit conditions or an interim decision providing the applicant the opportunity to prepare amended plans for the further consideration of the Tribunal.
4. While individually some of these issues may be able to be resolved through relatively minor amendments to the plans, I consider the combination of the range and nature of changes that will be required are too numerous and have consequential implications for other aspects of the proposal. As such, I do not consider it appropriate for these matters to be addressed in this way.
5. For the reasons I have given, the decision of the responsible authority is affirmed. No permit is granted.

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| Sarah McDonald  **Member** |  |  |

1. Clause 32.08-4. [↑](#footnote-ref-2)
2. Clause 32.08-6. [↑](#footnote-ref-3)
3. Clause 32.08-10. [↑](#footnote-ref-4)
4. Clause 22.01-2. [↑](#footnote-ref-5)
5. Clause 22.01-3. [↑](#footnote-ref-6)
6. Clause 22.01-4. [↑](#footnote-ref-7)
7. Ibid. [↑](#footnote-ref-8)
8. Clause 1.0 of the GRZ3 schedule, to clause 32.08. [↑](#footnote-ref-9)
9. Written submission of Mr Wright, for the applicants, [36(a)]. [↑](#footnote-ref-10)
10. Mr Pagliaro’s evidence statement, [78]. [↑](#footnote-ref-11)