# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

# planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P1761/2019  Permit Application no. TPA/50200 |

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| CATCHWORDS |
| Section 79 of the Planning & Environment Act 1987; Monash Planning Scheme;  Ten dwellings: Repeat Appeal – On-site amenity & Neighbourhood character (GRZ3) |

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| APPLICANT | ACN 613 358 544 Pty Ltd |
| RESPONSIBLE AUTHORITY | Monash City Council |
| respondent | Department of Transport |
| SUBJECT LAND | 1434-1436 North Road, Clayton |
| WHERE HELD | Melbourne |
| BEFORE | Tracy Watson, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 12 March 2020 |
| DATE OF ORDER | 20 March 2020 |
| CITATION | ACN 613 358 544 Pty Ltd v Monash CC [2020] VCAT 360 |

# Order

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & 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: | Jesse Ant Architects |
| * Drawing numbers: | TP00 to TP11 |
| * Dated: | 30-01-2020 |

1. The decision of the Responsible Authority is set aside.
2. In permit application TPA/50200 a permit is granted and directed to be issued for the land at 1434-1436 North Road, Clayton in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

* Construction of ten dwellings.

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| Tracy Watson **Member** |  |  |

**APPEARANCES**

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| For Applicant | Andrew Clarke, town planner. |
| For Responsible Authority | James Turner, town planner. |
| For Respondent | Department of Transport, no appearance. |

# INFORMATION

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| Description of Proposal | It is proposed to construct ten dwellings accommodated in two, two storey high buildings, divided by a central vehicular accessway, with a pedestrian accessway located along each side boundary of the subject site. |
| Nature of Proceeding | Application under Section 79 of the *Planning and Environment Act* 1987 – to review the failure to grant a permit within the prescribed time[[1]](#footnote-1). |
| Zone and Overlays | Clause 32.08 – General Residential Zone, Schedule 3 (Garden City Suburbs). Schedule 3 contains local variations to B6, B8, B9, B13, B17, B28 and B32. No overlays apply to the subject site. |
| Permit Requirements | Clause 32.08-6 – To construct two or more dwellings on a lot. |
| Relevant Scheme, policies and provisions | Includes Clauses 11, 15, 16, 21.04, 22.01, 32.08, 52.06, 55, 65 and 71.02. |
| Land Description | The subject site is located on the southern side of North Road in Clayton. The subject site comprises two rectangular-shaped allotments (each developed with a single dwelling) with a combined frontage of 34.7 metres, a depth of 40.11 metres, and a total site area of 1,393m2. The subject site is located in an established residential area. |
| Tribunal Inspection | 17 March 2020 |

# REASONS[[2]](#footnote-2)

## What is this proceeding about?

1. The permit applicant lodged an application for review with the Tribunal in September 2019 against the Monash City Council’s failure to determine the permit application within the prescribed statutory timeframe. However, the Council did subsequently consider the permit application and decided not to support the proposal primarily on the grounds that its neighbourhood character impact is unacceptable.
2. One statement of grounds has been lodged with the Tribunal from Michael Trakhtman. This statement of grounds raised queries rather than opposition to the proposed development.
3. This proceeding is a repeat appeal situation as an earlier iteration of the proposal, designed by the same architectural firm, has been previously considered by the Tribunal (*Catubig v Monash CC* [2018] VCAT 1720). The current proposal has been prepared, in part, to respond to the deficiencies of the earlier design response identified by the Tribunal. The proposal before me also seeks to respond to the changes made to the Monash Planning Scheme since the first Tribunal decision.
4. Based on the hearing process and all the relevant associated documentation, I consider that the key issues relate to whether the proposal has adequately responded to the first Tribunal’s adverse findings; and if the current proposal appropriately responds to the current planning scheme in relation to neighbourhood character considerations. Since the first Tribunal’s decision there have been no materially significant changes in the physical context of the subject site and surrounds, nor have there been any relevant changes in the interpretation of the facts or law. There have been relevant changes to the planning scheme though by the gazettal of Amendment C125 (Part 2).
5. I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions, and all of the statements of grounds, together with the applicable policies and provisions of the Monash Planning Scheme, I have decided to set aside the decision of the Responsible Authority. My reasons follow.

## Does the proposal respond appropriately to the first Tribunal decision?

1. Firstly, it is important to highlight that the first Tribunal did not make any adverse findings in relation to the original proposal’s impact on the existing or preferred neighbourhood character of the area. Moreover, the first Tribunal also considered that this area does not feature a notable existing ‘backyard’ character, and that the existing landscaping in the area is minimal. As I have already mentioned, there are have been no materially significant changes to the physical context in the interim period.
2. The adverse findings of the previous Tribunal were confined to internal amenity considerations. The first Tribunal was unsatisfied that the original proposal would “facilitate appropriate levels of internal amenity.” I note that in relation to internal amenity considerations, the planning scheme has not changed since the first Tribunal decision.
3. The key deficiencies of the original proposal identified by the first Tribunal in relation to internal amenity were:

* Inappropriate driveway interface caused by locating dwelling entries off the central driveway.
* Inappropriate levels of daylight to the living areas of those dwellings without north facing windows.
* Excessive need for screening, particularly to the west-facing windows and the upper level decks.
* Use of highlight windows to the street frontage.
* Location of bins to the site frontage.

1. Council submitted that the proposal before me continues to require too much screening and provides inappropriate entry arrangements for units 1 and 2.
2. I find that the current proposal has appropriately redressed each of the identified internal amenity issues by:

* Removing the front entries to dwellings from the internal driveway, and designing a layout which provides pedestrian access from two pathways located proximate to the side boundaries of the subject site. In other words, the function of the central driveway is for vehicular access which eliminates the previous Tribunal’s concerns regarding its passive surveillance and landscaping. The interface to the driveway is now appropriate given its changed function.
* The living areas of the middle, six dwellings now all feature north facing windows, as well as windows facing either east or west. The sectional diagram included in Plan no. TP09 demonstrates how the buildings have been designed to provide daylight access and sunlight penetration to the proposed north facing windows.
* Screening measures are now not required for any of the living area windows.
* The middle, six dwellings are now provided with roof terraces which have been designed to avoid the need for any screening measures.
* Appropriate activation of the street interface is achieved through the provision of four non-highlight windows to each of the front dwellings.
* Deletion of the bin storage from the front garden area.

1. Overall, I am satisfied that the proposal now provides for good levels of on-site amenity, including internal amenity for each of the dwellings, and satisfies the on-site amenity requirements of Clause 55 of the planning scheme.

**Does the proposal respond appropriately to Amendment C125 (Part 2)?**

1. The Council submitted that the current proposal does not provide for the desired spacious, open landscaped character. The Council also argued that the current landscape response is significantly less than the original landscape response.
2. As I have already mentioned, the previous Tribunal made favourable findings in relation to the original proposal’s impact on the existing and preferred built form and landscape character of the area and supported the landscape treatment around the site’s edges. The emphasis of the local planning policies in the planning scheme on maintaining and enhancing the garden city character of the municipality has not changed since the first Tribunal decision.
3. Mr Clarke made comprehensive submissions in regards to the changes to the planning scheme since the first Tribunal decision was made. For the purposes of my deliberations I consider that the main change I need to focus on is the new Schedule 3 to the General Residential Zone. I am satisfied that the other changes to the planning scheme would not lead me to reach a different conclusion to the previous Tribunal in relation to the suitability of the proposal from a neighbourhood character standpoint.
4. Schedule 3 to the General Residential Zone introduces four neighbourhood character objectives, six decision guidelines and seven local variations to the Clause 55 Standards. In other words, the planning scheme now has detailed local variations that have been specifically designed to provide for the desired built form and landscape outcomes to maintain and enhance the garden city character. In this case, there are no specific circumstances which would necessitate a more restrictive design response above and beyond what is proposed.
5. One of the key modifications to the proposed layout has been made to meet the new 5 metres rear building setback requirement of Standard B17.
6. The proposal meets the requirements of Standard B13. The current landscape response, compared to the original one, maintains canopy tree planting around all site boundaries and includes a total of 23 trees, including 8 trees with a mature height at least equal to the maximum height of the proposed development. The landscape proposal also includes vegetation along both sides of each pedestrian accessway and at the southern end of the internal driveway. It is unnecessary to landscape along the internal driveway as it is for vehicular access, rather than for pedestrians, and it is largely screened from the public realm by a front entry gate.
7. The only other minor, inconsequential variation to the Clause 55 Standards relates to the total amount of private open space provided for the proposed rear dwellings. The local variation to Standard B28 is for a total private open space area of 75m2, and it is proposed to provide a total area of 73m2. I consider this very small variation to be acceptable.
8. In summary, I am satisfied that the proposed scale, siting and building forms, in conjunction with the proposed landscape plan, ensures that the development is respectful of the existing and preferred neighbourhood character of the area and makes an acceptable contribution to the desired spacious, open garden city character.

## Other Matters

1. The Council submitted that the minimum aisle width of the proposed internal driveway needs to be increased from 6.1 metres to 6.4 metres to alleviate the need for correcting manoeuvres.
2. Swept path diagrams have been prepared by BVY Traffic Survey which demonstrate that the access and egress to the proposed garages is acceptable with an aisle width of 6.1 metres. Clause 52.06 of the planning scheme and the relevant Australian Standard does allow for the extent of correcting manoeuvres shown in the swept path diagrams.

## What conditions are appropriate?

1. The draft planning permit conditions were discussed at the hearing, and these discussions and my findings are reflected in the permit conditions contained in Appendix A.

## Conclusion

1. For the reasons explained above, the decision of the Responsible Authority is set aside. A permit is issued subject to conditions.

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| Tracy Watson **Member** |  |  |

# APPENDIX A

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| **PERMIT APPLICATION NO:** | TPA/50200 |
| **LAND:** | 1434-1436 North Road, Clayton |
| **WHAT THE PERMIT ALLOWS:** | |
| * Construction of ten dwellings. | |

# conditions

**Amended Plans**

1. Before the development starts, three copies of plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted by Jesse Ant Architects, Project Number 19-005 dated 30 January 2020 but modified to show:
   1. A notation on the ground floor plan that the rear boundary fence is 2.0 metres high.
   2. Notations on the plans to confirm that the south-facing windows of units 9 and 10 comply with Standard B22 at Clause 55.04-6 of the Monash Planning Scheme.
   3. Any changes required by the Sustainable Management Plan.

**No Alteration or Changes**

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

**Walls on Boundary**

* 1. The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

# Common Boundary Fences

* 1. All common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line.

**Landscaping**

* 1. Before the commencement of buildings and works, a landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority prior to the commencement of any works. The plan must be generally in accordance with the Species Landscape Plan dated Feb 2020 and show the proposed landscape treatment of the site including:-

1. the location of all existing trees and other vegetation to be retained on site
2. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development
3. planting to soften the appearance of hard surface areas such as driveways and other paved areas
4. a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material
5. the location and details of all fencing
6. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site
7. details of all proposed hard surface materials including pathways, patio or decked areas

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

**Landscaping Prior to Occupation**

* 1. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.

**Sustainable Management Plan**

7. Concurrent with the endorsement of any plans, a Sustainable Management Plan (SMP) must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SMP to the satisfaction of the Responsible Authority. The report must include, but is not limited to, the following:

1. Demonstration of how ‘best practice’ sustainability measures have been addressed, having regard to the relevant aspects of Clause 21.13 of the Monash Planning Scheme.
2. Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
3. Document the means by which the appropriate target or performance is to be achieved.
4. Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
5. Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.

All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to the endorsed Sustainable Management Plan may occur without written consent of the Responsible Authority and (to the extent material and necessary) any relevant flow-on changes to the design response must be also incorporated into the endorsed architectural plans.

1. Prior to the occupation of any of the dwellings approved under this permit, a report from the author of the endorsed Sustainable Management Plan (or similarly qualified person or company) must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that (in relation to those relevant completed dwellings ready for occupation) all measures specified in the Sustainable Management Plan have been implemented in accordance with the approved plan.

**Construction Management Plan**

1. Prior to the commencement of works on the site, a Construction Management Plan must be prepared and submitted to the Responsible Authority for approval. The plan must be to the satisfaction of the Responsible Authority. Once approved, the plan must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
2. measures to control emissions of noise and dust and water runoff from the site;
3. prevention of silt or other pollutants from entering Council’s underground drainage system or road network;
4. the location where building materials are to be kept during construction;
5. site security to prevent people from entering the construction site;
6. maintenance of safe movements of vehicles to and from the site during the construction phase;
7. on-site parking of vehicles associated with construction of the development;
8. wash down areas for trucks and vehicles associated with construction activities;
9. a program for cleaning and maintaining surrounding road surfaces;
10. a requirement that construction works must only be carried out during the following hours:

* Monday to Friday (inclusive) – 7.00am to 6.00pm;
* Saturday – 9.00am to 1.00pm;
* Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines).

**Drainage**

1. All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
2. All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council’s Engineering Department prior to drainage works commencing.

12. The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve. The internal drainage system may include either:

* a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
* shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
* another Council approved equivalent.

13. The nominated point of stormwater connection for the site is to the north west of the property where the entire site's stormwater must be collected and free drained via a pipe to the Council pit in the naturestrip outside 1434 North Road, Clayton to be constructed to Council standards. (A new pit is to be constructed to Council standards if a pit does not exist, is in poor condition or is not a Council standard pit). Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

**Road Infrastructure**

14. Approval of each proposed crossing, and a permit for installation or modification of any vehicle crossing is required from Council’s Engineering Department.

15. The proposed crossing is to be constructed in accordance with the City of Monash standards.



16. The existing redundant crossing is to be removed and replaced with kerb and channel. The footpath and naturestrip are to be reinstated to the satisfaction of Council.

17. All new crossings are to be no closer than 1.0 metre measured at the kerb to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.

18. A detailed plan of the access arrangements to North Road must be submitted to the Responsible Authority for approval. A Road Opening Permit, with associated refundable security bond, will be required from Council’s Engineering Department prior to the roadworks commencing.

19. Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) from the edge of the exit lane of the proposed vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.

**Permits**

20. Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council drains and these works are to be inspected by Council's Engineering Department. A refundable security deposit of $1,000 is to be paid prior to the drainage works commencing.

**Completion of Buildings and Works**

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

**Department of Transport**

22. Prior to the commencement of the use or occupation of the development, all disused or redundant vehicle crossings must be removed, and the area reinstated to the satisfaction of the Responsible Authority and at no cost to Head, Transport for Victoria or the Responsible Authority.

23. Prior to the commencement of the use or the occupation of the buildings or works hereby approved, the access crossover and associated works must be provided and available for use to the satisfaction of the Responsible Authority and at no cost to Head, Transport for Victoria or the Responsible Authority.



24. Vehicles must enter and exit the land in a forward direction at all times.

**Permit Expiry**

25. This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:

* The development has not started before two (2) years from the date of issue.
* The development is not completed before four (4) years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

**---** **End of Conditions** ---

1. Section 4(2)(d) of the *Victorian Civil & Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse the permit application. [↑](#footnote-ref-1)
2. I have considered the written and oral submissions of the two parties, including their tendered exhibits, and all the statements of grounds filed. I do not recite or refer to all of the contents of those documents in these reasons. [↑](#footnote-ref-2)