VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | | vcat reference No. P1948/2019  Permit Application no. TPA/49540 |
| APPLICANTS | Yan Su, Shi Liu | |
| responsible authority | Monash City Council | |
| RESPONDENT | DSN Properties | |
| SUBJECT LAND | 16 Evelyn Street CLAYTON VIC 3168 | |
| WHERE HELD | Melbourne | |
| BEFORE | Peter Gaschk, Member | |
| HEARING TYPE | Hearing | |
| DATE OF HEARING | 28 August 2020 | |
| DATE OF ORDER | 27 November 2020 | |
| CITATION | Liu v Monash CC [2020] VCAT 1336 | |

# Order

### Permit granted

1. In application P1948/2019 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/49540 a permit is granted and directed to be issued for the land at 16 Evelyn Street, CLAYTON VIC 3168 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Use and construction of a double storey building with basement parking to be used for the purposes of student accommodation on land in a General Residential Zone, Schedule 3.

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| **Peter Gaschk**  **Member** |  |  |

# Appearances

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| For applicants:  Ms Yan Su  Ms Shi Liu | Mr Zhengchi Liu  Appeared in person |
| For responsible authority | Mr James Turner, Principal Planner – Appeals Advisor |
| For respondent | Mr Stanojevic, Town Planner with Ask Planning Services Pty Ltd |

# Information

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| Description of proposal | The use and construction of a two-storey building for the purpose of student accommodation. The development proposes 24 bedrooms, 11 units are provided on the ground floor, 13 on the first floor. Two accessible units and a manager’s unit will be provided on the ground floor. Eighteen units are self-contained. Six units rely upon communal kitchen facilities provided on the ground floor.  The basement provides eight parking spaces, 14 bicycle spaces, a 10sqm laundry, a 16sqm refuse storage area, services and other storage areas internally accessed by stairs and a lift from the ground floor.  The existing crossover is to be replaced by a 3.2m ramped access to the basement.  The development will provide 44.3sqm of communal open space to the rear of the building and 43.4sqm to the front. Eight of the ground floor units have direct access to the private open space. |
| Nature of proceeding | Application under section 82 of the *Planning and Environment Act 1987* – to review the decision to grant a permit. |
| Planning scheme | Monash Planning Scheme (the Scheme) |
| Zone and overlays | General Residential Zone, Schedule 3 (GRZ3)[[1]](#footnote-1)  No overlays apply. |
| Permit requirements | Clause 32.08-2: Section 2 Use - Planning Permit required as conditions to use land for a Rooming House[[2]](#footnote-2) under clause 52.23-2 are not satisfied.  Clause 32.08-9: To construct a building or construct or carry out works associated with a Section 2 Use. |
| Relevant scheme policies and provisions | Clauses 11.01-1S, 15.01-1S, 15.01-5S, 16.01, 21.04, 22.01, 22.04, 22.05, 22.10, 32.08, 52.06, 52.23, 52.34, 55, 65.01 and 71.02 |
| Land description | The review site is located on the east side of Evelyn Street, having a frontage of 16.7m, depth 41.3m and an area of 695sqm. The land currently accommodates a single storey brick building with pitched tile roof. A single vehicular crossover is located to the south of the street frontage, with a concrete drive leading to a brick garage to the rear of the dwelling. There are no significant trees on the site and one tree on the road reserve in front of the dwelling. A power pole is located on the nature strip with a raised traffic calming platform north of the existing crossover. Evelyn Street forms a one way road pavement around an existing park reserve that includes a children’s playground.  The site abuts an industrial precinct to the rear that includes large scale warehouse and service industries fronting Princes Highway. To the north at 14 Evelyn Street is a single storey detached dwelling with pitched roof. This dwelling sits higher in the streetscape than the dwelling on the review site due to the north to south fall of Evelyn Street. The secluded private open space (SPOS) for 14 Evelyn Street is located to the rear of the dwelling. A single width driveway runs along the common southern boundary. To the south at 18 Evelyn Street are two single storey dwellings configured in a tandem formation with one common access driveway running along the property’s southern boundary. The front dwelling’s SPOS is located to the front of the dwelling sharing a common boundary with the subject site. The SPOS for the second dwelling is located along the eastern (rear) boundary. |
|  | The review site is located within a residential area of single detached housing and emerging multi-unit residential development. The area displays a degree of consistency with front setbacks generally 7.6m, pitched roof forms, tiled roof materials and wall materials either weatherboard or exposed brick. Front fencing is generally low or non-existent.  The land is conveniently located being some 150m south of the Princes Highway and approximately 450m south of Monash University. A bus stop is located at the north end of Evelyn Street with buses running along Princes Highway to Chadstone Shopping Centre. Evelyn Street Reserve is located directly opposite the site to the west. |
| Tribunal inspection | Undertaken 26 November 2020. |

# Reasons[[3]](#footnote-3)

## What is this proceeding about?

1. This is an application for review under Section 82 of the *Planning and Environment Act 1987* **(the Act)** by Yan Su and Shi Liu[[4]](#footnote-4) **(the applicants)** against the responsible authority’s **(the council)** Notice of Decision to Grant a Permit **(Notice of Decision)** for the construction of a double storey building with basement parking to be used for the purposes of student accommodation **(the proposal)** at 16 Evelyn Street, Clayton **(the review site)**.
2. The council considered the proposal on 10 September 2019 and issued a Notice of Decision to approve Planning Permit TPA/50602 subject to 31 conditions. The council submits the proposed development is appropriate for the land subject to those conditions.
3. The applicants do not agree with the council and submit the proposed development:

* Does not respect the existing and preferred neighbourhood character.
* Is too large and creates visual bulk and results in an overdevelopment of the site.
* Will result in excessive overshadowing of SPOS and overlooking to adjoining properties.
* Does not satisfy Scheme provisions (clause 55) including site coverage, rear setbacks, private open space, car parking and traffic movement, poor site amenity and failure to meet student accommodation requirements in clause 22.10.
* Lacks appropriate landscaping and results in excessive hard stand area.
* Will increase fire risks to the rear industrial interface.

1. The respondent **(the permit applicant)** supports the council’s decision. It submits:

* The proposal is consistent with relevant objectives of State and Local Planning Policies.
* The proposal will not raise any unreasonable noise impacts.
* The provision of communal space, both internally and externally, is sufficient.
* The proposed site coverage is acceptable and will allow for adequate landscaping opportunities.
* The proposed rear setback is sufficient and responds appropriately to the industrial interface.
* The proposal does not result in any unreasonable overshadowing.

## The Proposal

1. The proposal is described in the council submission as follows:

The proposal is for the use and construction of a two-storey residential building for the purpose of student accommodation. The development will include 24 bedrooms, 11 units are provided on the ground floor, 13 on the first floor. Two accessible units and a manager’s unit will be provided on the ground floor.

Eighteen units are self-contained. Six units rely upon communal kitchen facilities provided on the ground floor.

Eight parking spaces are provided in the basement which can be internally accessed by stairs and a lift from the ground floor. The basement also accommodates 14 bicycle spaces, a 10sqm laundry, a 16sqm refuse storage area, services and other storage. The existing crossover is replaced by a 3.2m ramped access to the basement.

The development will provide 44.3sqm of communal open space to the rear of the building and 43.4sqm to the front. Eight of the ground floor units have direct access to the private open space.

1. The new building incorporates a 7.8m frontage setback at ground level and 7.6m at first floor level. Setbacks to the southern and northern boundaries is 1.7m. The rear boundary setback is staggered with a minimum 2.0m setback for the south east corner of the building and 5.7m at its north east corner. The overall building height is 7.4m, site coverage 58%, with a minimum garden area of 38%.

## What are the key issues?

1. Having considered the submissions and supporting material from the parties and inspection of the site and surrounds, I consider the key issues I need to determine are:

* Is the proposal strategically acceptable having regard to the State and local planning policy?
* Does the proposal appropriately respond to neighbourhood character?
* Will the proposal result in any unreasonable impacts upon the amenity of adjoining properties and the surrounding area?

1. I find the proposal satisfies the strategic planning policy intent and objectives of the Scheme. The proposal responds appropriately to the existing and preferred neighbourhood character and provides a satisfactory design response that results in appropriate amenity outcomes on adjoining properties and the area more generally.
2. I affirm the council’s decision and direct a permit issue for the proposed development, generally in accordance with the council’s Notice of Decision. However, I will require a minimum building setback of 5.0m along the entire rear boundary to provide for additional landscaping and reduce visual bulk to the adjoining single storey dwelling at 2/18 Evelyn Street. The 5.0m setback will be achieved by deleting Bedrooms G.07 and 107 from the rear of the proposed building, thereby reducing the number of student units from 24 to 22. Condition 5(a) of the Notice of Decision will be amended to read:

That each of the rooms are used for a single student only and no more than 22 occupants can reside at any given time.

1. My detailed reasons and findings follow.

## Is the proposal strategically acceptable having regard to the State and local planning policy?

### State Policy Framework

1. Planning Scheme Amendment C125 (Part 2) was gazetted after the council issued its Notice of Decision to Grant a Permit for the proposal on 14 November 2019. The amendment, amongst other matters, resulted in the site rezoned from GRZ2 to GRZ3. While the 3 storey (11m) mandatory maximum height remains the same, the modified Clause 55 requirements are different to those which applied in the GRZ2. This includes changes to:

* Site coverage (50%)
* Permeability (30%)
* Landscaping (one canopy tree plus one canopy tree per 5.0m of site width, including vegetation planting to side and rear setbacks)
* Rear setbacks (5.0m rear setback).

1. The permit applicant seeks variations to site coverage and permeability ratios, as well as seeking to reduce the rear setback. Apart from the rear setback requirement, I consider the site coverage and permeability variations are minor in nature and have been appropriately addressed through amended site layout and permit conditions that results in an improved building envelope on site.
2. Plan Melbourne (Policy reference at 11.01-1S) seeks the creation of *20 minute neighbourhoods* where *people can access a range of local services and facilities within 20 minutes of home”.* Three objectives to achieve a 20 minute neighbourhood include:

* Sufficient population to attract businesses and services;
* Good walking environment; and,
* A centre to which people are attracted.

1. The proposed development responds positively to this policy setting and key objectives, being conveniently located to a range of community services, shopping centres and public transport options.
2. Clauses 15.01-1S and 5S deal with urban design, neighbourhood character and housing diversity. Importantly, I acknowledge clause 16.01-1S seeks to encourage high quality student accommodation in appropriate locations as detailed below:

Ensure that an appropriate quantity, quality and type of housing is provided, including aged care facilities and other housing suitable for older people, supported accommodation for people with disability, rooming houses, student accommodation and social housing.

(Tribunal emphasis added)

1. I find the proposed development satisfies this policy objective by providing for a student accommodation facility that is well located to the Monash University. I consider the proposal has satisfactorily addressed the relevant matters raised in the State policy provisions I have outlined above.

### Local Policy Setting

1. At a local policy level, clause 21.04 introduced the *Monash Housing Strategy 2014* and a residential development framework into the Scheme. This provides for eight residential character types across the municipality. Objectives and strategies under this clause also seek to encourage a variety of housing types and sizes that will accommodate a diversity of future housing needs and preferences.
2. Clause 22.01 identifies the review site within the *Gardens City Suburbs – Southern Area*. An emphasis in this residential area is placed on respecting neighbourhood character, preserving and enhancing the garden setting of the municipality, achieving high quality urban design outcomes and minimising impacts from parking and traffic movement associated with new residential development.
3. I find that clause 22.10 is particularly relevant to this proposal. This clause introduced a specific Student Accommodation policy into the Scheme in August 2009. The policy seeks to guide the development and location of student accommodation facilities in appropriate locations of the city. Policy objectives relevant to this proposal include:

* To encourage student accommodation to locate in reasonable proximity to tertiary institutions with convenient access to public transport and a range of commercial, retail, entertainment and social facilities.
* To encourage high quality, well designed student accommodation that respects existing neighbourhood character and responds to the desired future character statement of the relevant Residential Character Type identified in Clause 22.01-4.
* To ensure that bulk, mass and height of new student accommodation does not visually overwhelm the scale of existing development, particularly in residential areas.
* To ensure adequate car parking and bicycle storage is provided on site to meet the needs of students and visitors.
* To ensure that well-proportioned, convenient and safe open space areas are integrated into the design which meet the recreational needs of student residents.
* To identify acceptable standards of habitation for individual and communal rooms.
* To ensure student accommodation facilities are used and developed in a manner which responds to the needs of the students and does not adversely impact on surrounding properties.
* To maintain and enhance the garden city character of Monash by preserving existing vegetation and have new canopy trees planted.

1. The site location is shown below:



Source: Permit applicant’s submission

1. It is significant in my support of this proposal that the review site is located within an area that is very well serviced by public transport options, with walking/cycling options also available given the distance from the Monash University, Clayton Campus (450m to the south). This is one of four key preferred location criteria under clause 22.10. Other locational preferences include:

* A site within 800m of a railway station and Principal, Major or larger Neighbourhood Activity Centre; and,
* A location that is serviced within 400m of a bus route that provides access to a tertiary institution.

I note the proposed development satisfies all of the preferred location attributes sought under clause 22.10.

1. I place considerable weight on these matters. Clause 22.10 has been in the Scheme for a number of years and was derived from the council’s *Guide to Student Accommodation* (August 2009). It is a long standing policy that has been effectively used by the council to guide the location and quality of student accommodation facilities within its municipality. As a consequence, I find the proposal is strategically acceptable having regard to the State and local planning policies I have described above.

## Does the proposal appropriately respond to neighbourhood character matters?

1. The applicants say the proposed development does not appropriately address existing and preferred neighbourhood character. They say the building is simply too large for the site and is an overdevelopment of the site. I do not agree with these submissions.
2. Neighbourhood character objectives are expressed in the GRZ3, which amongst other matters seeks:

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.

1. Preferred character objectives for new development on the review site are also expressed in the following preferred character statement for the Garden City Suburbs – Southern Area:

While the housing mix within this area will continue to evolve to meet the changing 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.

1. Additional character settings are also provided at clause 22.10. This includes objectives:

* To encourage high quality, well designed student accommodation that respects existing neighbourhood character and responds to the desired future character statement of the relevant Residential Character Type identified in Clause 22.01-4.
* To ensure that bulk, mass and height of new student accommodation does not visually overwhelm the scale of existing development, particularly in residential areas.

1. I find the proposal responds appropriately to the preferred character settings expressed at clauses 21.04, 22.01 and 22.10. In my view, the preferred character objectives detailed in these policies, and those contained within the GRZ schedule, do not seek to mimic the existing character of the area. There is a degree of change expected in this evolving residential area, to capitalise on the area’s proximity and accessibility to the Monash University, employment precincts and major activity centres. Multi-unit development of two storey form is strongly emerging along Evelyn Street. I note this new development is resulting in higher residential density mix and housing diversity in this neighbourhood. Including residential proposals with boundary wall construction, centralised driveways and use of more modern architectural styles and materials. This is occurring on sites that have traditionally contained a more modest scaled, single storey detached house, with a single vehicle driveway located along one side of the lot. My inspection confirmed this change is not isolated to Evelyn Street but is also evident in nearby residential streets.
2. I consider this proposal is consistent with the built form changes I observed during my inspection. Noting this is consistent with the preferred character statement for the area as follows:

* The proposed design response reflects a contemporary architectural style and use of modern materials (see Standard B32 - clause 55.06).
* The proposed built form envelope sits comfortably within the preferred building envelope sought under Standard B17 - clause 55.04.
* The overall 7.3m two storey height of the residential building sits comfortably within the three storey permitted height under the GRZ3.
* The *purpose built* design response also ensures the overall height and scale of the new building responds appropriately to the adjoining single storey dwellings in the overall streetscape setting.[[5]](#footnote-5)
* The 7.8m front setback at ground level and 7.6m upper level setback provides some built form articulation and is consistent with other front setbacks in the street and area.
* The proposed 1.2m high front fence provides garden views to the front yard and is consistent with the front fencing treatment associated with adjoining and nearby dwellings located along Evelyn Street.

1. I acknowledge the proposed side setbacks of 1.7m for the new building are relatively narrow in comparison to existing side setbacks of single storey detached housing in the street. However, this side setback is consistent with the setbacks I observed for a number of newer medium density housing developments in the area. I find this narrower side setback is acceptable in this particular setting. Given the adjoining dwelling at 14 Evelyn Street has its driveway along the common boundary and the Standard B17 built form envelope has been satisfied to both boundaries. This is shown in the following plan diagrams included with the permit applicant’s submission below:





1. I also note that plans now show a deeper central break has been provided between units 101 and 114 at the upper level of the building and a more neutral seam metal cladding, in mid grey colouring has been proposed. In addition, I am also satisfied the front setback can accommodate suitable canopy tree planting that will help filter views of the new built form to and along the street.[[6]](#footnote-6)
2. I am also satisfied the upper level of the building has an appropriate level of built form articulation by using different building materials and form, including balconies, lower angled roof forms and planter box treatments, to ensure the side elevations present a variable and articulated appearance.
3. I consider these are positive design outcomes that address the preferred character outcomes sought under local policy settings. With changes to increase the rear building setback to provide additional landscaping opportunity, I find the proposal appropriately responds to the preferred neighbourhood character statement and will place the new building within a landscaped garden character setting sought under clause 32.08.

## Will the proposal result in any unreasonable impacts upon the amenity of adjoining properties and the surrounding area?

### Noise and student numbers

1. The applicants have expressed concerns that the proposed use will generate excessive noise to their adjoining properties, largely due to the number and movement of students on the site (24). I agree with these submissions and have some concerns that the student density of the proposed facility is somewhat high in this particular location. Proposed design changes to the rear building setback, with subsequent deletion of two student units, will enable a slight reduction in student numbers to 22. I consider this reduced student density more appropriate in this physical setting.
2. I accept the proposed size of all student bedrooms and location of the communal space to the front of the site generally satisfy the design requirements and objectives sought under clause 22.10. The building also includes a level of noise attenuation features; achieved through ESD requirements that incorporates double glazing for all windows. The site will also be managed by an onsite manager operating under an approved Management Plan (see condition 3 of the council’s Notice of Decision). I find these are all positive elements of the purpose built building for student accommodation.
3. I am satisfied the design changes described above, combined with the ongoing management of the site under an approved Management Plan, will ensure the use of the site does not result in excessive or unreasonable noise impacts to adjoining properties.

### Overlooking

1. The applicants are concerned the proposed building design will result in direct overlooking into their respective properties. I note from my assessment of the development plans that the design response includes a number of screening treatments and angled/indented window setbacks that address potential overlooking from windows and balconies into these properties. This includes all first floor windows and balconies of the new building provided with obscure glazing or physical external screens in compliance with Standard B17.
2. The council also requires an additional 20cm trellis added to the southern boundary fence to limit direct views from ground elevation window openings associated with the proposed building (Condition 1 requirement). I support the additional fence height treatment along this boundary given the slope of the land to address any potential ground level views.
3. I am satisfied the design response has achieved an appropriate level of screening for windows and balconies that addresses Standard B17 and meets the respective clause 55 objective.

### Overshadowing

1. The relevant objective at clause 55.04-5 (Overshadowing Open Space) seeks *to ensure buildings do not significantly overshadow existing secluded private open space*. The associated Standard B21 seeks to ensure that at least 40sqm of existing SPOS associated with an existing dwelling, receives a minimum of 5 hours of sunlight between the hours of 9am and 3pm, measured at the September Equinox.
2. The applicant residing at 1/18 Evelyn Street says the proposed development will result in unacceptable overshadowing of their primary open space area located along the northern side of their dwelling. I accept the shadow diagrams submitted with the application show the new building will cast some additional shadow into the SPOS areas located adjoining the common southern boundary with 1/18 Evelyn Street.
3. However, having inspected the review site and adjoining properties, I agree with submissions from the council and permit applicant that the private open space area identified along the north side of the dwelling at 1/18 Evelyn Street, is not the sole or primary SPOS area of that dwelling. This area is also physically linked with further enclosed SPOS to the front of the dwelling. I also accept the SPOS along the side of the dwelling at 1/18 Evelyn Street is used as a service yard with direct access from the laundry to storage areas, clothesline and hot water system. The additional SPOS located to the front of the dwelling at 1/18 Evelyn Street has an area of at least 40sqm and is defined and enclosed by a 1.8m high fence, restricting any direct views from the street. It also includes a gate that provides access to the side driveway and front entrance to the dwelling. I observed this area was being used for open space purposes, including a vegetable garden.
4. The shadow diagrams submitted with the application indicate this particular SPOS area will remain unshaded for at least 5 hours at the September Equinox. Given my finding above, I am satisfied that the combined north and west SPOS areas available to the applicant’s dwelling at 1/18 Evelyn Street, will not be adversely impacted by unreasonable or excessive overshadowing across the day. The relevant objective at clause 55.04-5 and Standard B21 has been satisfied.
5. Some concerns were raised in respect to the existing solar panels located over the roof of the dwelling at 2/18 Evelyn Street. I note from the shadow diagrams that no additional shadows will be cast across the panels between 9am through to 3pm at the September Equinox. The Council says this is sufficient to demonstrate the operation of the panels will not be unreasonably compromised by the proposal. I agree with the council and find the proposed development will achieve compliance with Standard B10 (Energy Efficiency) and the relevant clause 55 objective.

### Rear Setback and Amenity

1. The schedule to the GRZ3 includes the following rear setback requirement:

A new wall not on or within 200mm of a rear boundary should be setback at least 5 metres.

1. Both applicants submit the entire building should be set back 5.0m from the rear boundary, not the 2.0m currently provided to the south east corner of the site. Mr Liu is also concerned the reduced rear setback to the adjoining industrial uses will increase the risk of fires with a narrower rear setback.[[7]](#footnote-7)
2. The council advised the 5.0m setback was included in the GRZ3 schedule to encourage the creation of *green corridors* to the rear of properties under the GRZ3. However, it says the rear of properties in this street demonstrate variable rear setbacks and adjoin a robust interface with existing industrial uses.
3. My inspection of the site, including a view of current aerial photographs obtained from Near Map, confirmed that a number of dwellings in this section of Evelyn Street include variable rear setbacks. This included outbuildings and additional dwellings forming part of newer medium density developments. Nevertheless, I noted properties at 12, 14, 16, 24, 26 and 28 Evelyn Street still maintained a rear setback that met or exceeded the 5.0m setback requirement sought under the GRZ3.
4. However, my primary concern regarding the 2.0m rear boundary setback proposed to the south east corner of the new building, relates solely to the impact this reduced setback will have on the visual amenity and outlook of the occupants of the rear dwelling at 2/18 Evelyn Street. I find the south east corner of the new building should be set back 5.0m from the rear boundary. I consider this will significantly improve the visual setting and *open up* the rear setback of this building to the existing SPSO of the dwelling at 2/18 Evelyn Street. It will also have the added advantage of providing further area for additional canopy tree planting in the rear yard that will help soften the appearance of the building to the adjoining property. I will require this by condition.
5. I will also require the rear setback of the south east corner of the new building to be increased to 5.0m by deleting units G.07 and 107, without altering the proposed front and side setbacks of the new building envelope. I find this design change will result in an improved visual and amenity setting directly opposite the rear SPOS associated with the single storey dwelling at 2/18 Evelyn Street.
6. I accept this change will also reduce the overall number of student bedrooms from 24 to 22. As outlined above, I find this reduced student number will help in managing adverse amenity impacts that may arise as a result of the approved use for student accommodation. In making this finding, I acknowledge the new building is purpose built and includes onsite management as a student accommodation facility. However, I find a small reduction of student numbers, combined with these design and management elements, are equally important in my support of this proposal.
7. Subject to this design change I find the proposal as shown in submitted plans will not result in any unreasonable impacts upon the amenity of adjoining properties and the surrounding area.

## Are there any other issues?

1. The applicants raised concerns in respect to the small number and type of car parking proposed at basement level for the proposed use.
2. Clause 52.06 of the Scheme does not provide a numeric parking standard for Student Accommodation. Nor does it prohibit the use of basement parking for this proposal. Car parking is to be provided to the satisfaction of the council as the responsible authority. I agree with the council that clause 22.10 also provides appropriate guidance as to car parking arrangements specifically for this type of use.
3. The provision of eight car parking spaces in the basement exceeds the parking performance standards identified in Clause 22.10 (a minimum of 0.3 car spaces per bed within preferred locations – 7.2 spaces required). This requirement reduces to 6.6 spaces with 22 student units. I also note council traffic engineers have reviewed the plans and support the development with basement parking, subject to conditions that have been included within the council’s permit conditions in its Notice of Decision.
4. Given the proposed student numbers has been reduced by 2 as a result of the amended rear building setback, I am satisfied the proposed basement parking for eight spaces is appropriate. Importantly, the proposal will retain a total of 14 bicycle parking spaces within the basement area. This exceeds the recommended rate of 12 spaces sought under local policy.
5. I find the basement parking and bicycle spaces provided for the development satisfies the relevant requirements under clause 22.10.

## What conditions are appropriate?

1. Proposed conditions in the council’s Notice of Decision were discussed with the parties at the conclusion of the hearing. I have considered the submissions from the parties on these conditions.
2. As I noted above, I will include a new Condition 1(a) – the deletion of bedrooms G.07 and 107 to enable a rear setback of the south east corner of the new building to be increased to 5.0m. In addition, I will amend Condition 5(a) – student numbers permitted on site to read no more than 22 occupants can reside at building at any given time. I will also amend Condition 7(b) to specify the provision of two canopy trees within the rear setback of the site.
3. Subject to these changes, some minor formatting, renumbering and editing, I am satisfied with the remaining conditions proposed by the council.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is affirmed. A permit is granted subject to conditions.

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| **Peter Gaschk**  **Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No | TPA/49540 |
| Land | 16 Evelyn Street CLAYTON VIC 3168 |

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| What the permit allowS |
| In accordance with the endorsed plans:   * Use and construction of a double storey building with basement parking to be used for the purposes of student accommodation on land in a General Residential Zone, Schedule 3. |

## Conditions

### Amended Plans

1. Before the development starts, three copies of amended 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 amended plans submitted on 26 August 2019 and labelled as revision “L”, but modified to show:
   1. A minimum building setback provided to the eastern (rear) boundary of 5.0m by deleting Bedrooms G.07 and 107 with no further changes to front or side boundary setbacks.
   2. 20cm free standing trellis up to the maximum height of 2.0m is required to be provided along the southern fence for the length of 10m.
   3. Delete kitchen platform from G.01.
   4. A note requiring the protection of street tree and tree on the neighbouring property in accordance with the Arboricultural report prepared and submitted with the application.
   5. Details of all external lighting, which must be designed, baffled and located to prevent any adverse effect on adjoining land.
   6. Details of all service equipment, including any mechanical ventilation, heating and cooling systems located outside the building or on the building and appropriate screening to be incorporated as part of the architectural design of the building. Air conditioning units must not be located on balconies or the facades of the building.
   7. The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at a distance from the street which is at or behind the setback alignment of buildings on the site or in compliance with Council’s “Guide to Electricity Supply Meter Boxes in Monash”.
   8. Corner splay or areas at least 50% clear of visual obstruction (or with a height of less than 1.2m) extending at least 2.0 metres long x 2.5 metres deep (within the property) on both sides of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
   9. The location of proposed mailboxes.

### 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.

### Management Plan

1. Prior to the commencement of the use, a Management Plan for the Student Accommodation facility is to be prepared, submitted to and approved by the responsible authority. The Management Plan must include the following:
   1. The contact details of the responsible contact person displayed in a manner and location so that it is visible to any person entering the site. This information is to be updated as required immediately following any change to the nominated responsible contact person.
   2. Details of the terms of accommodation and the maximum number of persons to be accommodated onsite.
   3. Car parking spaces are only permitted to be used by the occupants of the units and their visitors and must not be subdivided, on-sold or leased to any other person.
   4. A register that documents the allocation of car spaces.
   5. Maintenance of buildings and grounds, including all landscaped areas.
   6. Provision of information to students on local public transport and amenities in the area.
   7. Permanent display of the Management Plan in a common area accessible to all residents of the student accommodation facility.

### Use of Land

1. The development can only be used for the purpose of student accommodation. Should the land cease to be used for student accommodation, a new planning permit may be required for any alternative use. The car parking requirements for any subsequent use will be assessed in accordance with the provisions of the Monash Planning Scheme.

### Section 173 Agreement

1. Prior to the endorsement of plans referred to in Condition 1 the owner of the land must enter into an agreement with the responsible authority under Section 173 of the *Planning and Environment Act 1987*. In addition to the usual mechanical provisions, the agreement must provide for the following matters:
   1. That each of the rooms are used for a single student only and no more than 22 occupants can reside in the building at any given time;
   2. That no person may reside in the building unless that person is a bona fide student or academic whether part time, full time, short term or resides there in a supervisory, management or caretaker capacity;
   3. Car parking spaces are only permitted to be used by the occupants of the units and their visitors and must not be subdivided, on-sold or leased to any other person;
   4. The number of students residing on-site who have cars shall not exceed the number of on-site car spaces provided by the development; and,
   5. Should the land cease to be used for student housing, a new planning permit may be required for an alternative use. It should be noted that any dispensation for on-site car parking given to the student accommodation development is not transferable to any proposed alternative use of the land. Any subsequent use will be assessed in accordance with the car parking requirements of the Monash Planning Scheme;

The cost of the preparation and review of the Section 173 Agreement and its registration on the title of the land must be borne by the owner of the land.

### Waste Management Plan

1. Prior to the commencement of works on the site, the owner shall prepare a Waste Management Plan which must be submitted and approved by the responsible authority. The plan must detail the collection and disposal of garbage and recyclables for the site. The Waste Management Plan shall provide for:
   1. The method of collection of garbage and recyclables for uses;
   2. Designation of methods of collection including the need to provide for private services or utilisation of Council services;
   3. Appropriate areas of bin storage on site and area for bin storage on collection days;
   4. Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas; and,
   5. Litter management.

### 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 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 area at the front of the development, with a minimum of two canopy trees located in the rear setback of the site;
   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; and,
   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.

### Common Boundary Fences

1. All common boundary fences (apart from the fence height in condition 1(b) of this permit) 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.

### Urban Design

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

### Amenity

1. The amenity of the area must not be detrimentally affected by the use or development, through the:
   1. Transport of materials, goods or commodities to or from the land;
   2. Appearance of any building, works or materials;
   3. Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil; and,
   4. Presence of vermin.
2. Air-conditioning and other plant and equipment installed on or in the buildings must be so positioned and baffled that any noise emitted complies with the appropriate Australian Standards and EPA requirements.

### Stormwater

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. The private on-site drainage system must prevent stormwater discharge from the 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.

1. 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.
2. The nominated point of stormwater connection for the site is to the south-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the kerb and channel in the nature strip via a Council approved kerb adaptor to be constructed to Council Standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

### Road Infrastructure

1. All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
2. All new vehicle 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.
3. The existing redundant crossing is to be removed and replaced with kerb and channel to the Council Standards.
4. Any works within the road reserve must ensure the footpath and nature strip are to be reinstated to Council standards.

### Engineering Permits

1. Engineering permits must be obtained for new or altered vehicle crossings and new connections to kerb and channel 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.

### Traffic and Transport

1. Approval of each proposed crossing, and a permit for installation or modification of any vehicle crossing is required from Council’s Engineering Department.
2. The existing crossing is to be widened and fully reconstructed in accordance with the City of Monash standards.
3. Any section of redundant crossing is to be removed and replaced with kerb and channel. The footpath and nature strip are to be reinstated to the satisfaction of Council.
4. 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) on both sides of the vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
5. The accessible parking spaces should be designed in accordance with the Australian Standard for Off-Street Parking for people with disabilities, AS/NZS 2890.6. The vehicle path to and from each accessible space shall have a minimum headroom of 2200mm. The headroom above each dedicated space and adjacent shared area shall be a minimum of 2500mm. Whilst the headroom at the critical point is calculated 2200mm, this a floor to floor measurement and does not take into account the width of floors etc.
6. Bicycle parking facilities shall generally follow the design and signage requirements set out in Clause 52.34 of the Monash Planning Scheme.
7. The developer is to provide a waste management plan for the site to the satisfaction of the responsible authority.

### Hours of Construction

1. The construction works associated with the use/development and/or subdivision hereby permitted must only be carried out during the following hours:

* Monday to Friday (inclusive) – 7:00am to 6pm;
* Saturday – 9am to 1pm;
* Saturday – 1pm to 5pm (Only activities associated with the erection of buildings. This does not include excavation or the use of heavy machinery);

Unless otherwise approved in writing by the responsible authority.

### Completion of Buildings and Works

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

### Permit Expiry

1. This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
   1. The development has not started before two (2) years from the date of issue.
   2. 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. At the time of assessing the application the site was located within General Residential Zone

   Schedule 2. Following gazettal of Planning Scheme Amendment C125 Part 2 to the Scheme in November 2019 the site is now within General Residential Zone Schedule 3. [↑](#footnote-ref-1)
2. Rooming House defined under the *Residential Tenancies Act 1997* means: *a building in which there is one or more rooms available for occupancy on payment of rent.* The proposal does not meet the permit exemptions specified for a Rooming House under clause 52.23-2 of the Scheme (i.e. floor area exceeds 300sqm, more than 12 people are to be accommodated in the building and more than 9 bedrooms are to be provided). A planning permit is therefore required under clause 32.08-2 of the Scheme. [↑](#footnote-ref-2)
3. The submissions 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-3)
4. Ms Liu also tabled a signed petition with 17 signatures opposing the proposed development. [↑](#footnote-ref-4)
5. Mr Liu expressed concerns that the elevation plans submitted with the application did not appear to accurately show the height of his single storey dwelling at 14 Evelyn Street compared to the height of the new building. I noted from my inspection that the dwelling at 14 Evelyn Street *sits proud* of the single storey dwelling currently on the review site. I am satisfied the overall height and scale of the new building at 7.3m will sit comfortably with the adjoining single storey form of the existing dwellings at 14 and 18 Evelyn Street. [↑](#footnote-ref-5)
6. I refer here to landscape plans prepared by John Patrick Landscape Architect, submitted with the application that show canopy tree planting can be appropriately placed in both the front and rear setbacks of the site. Condition 7 of the council’s Notice of Decision also requires submission and approval of a landscape plan to be prepared by a Landscape Architect or suitably qualified landscape designer. [↑](#footnote-ref-6)
7. Mr Liu included a series of photographs in his submission that showed evidence of fire damage to the rear of his fence in 2015. [↑](#footnote-ref-7)