VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P1382/2019  Permit Application no. TPA/50053 |

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| APPLICANT | Triple Z Property Group Pty Ltd |
| responsible authority | Monash City Council |
| SUBJECT LAND | 29 Dennis Street CLAYTON VIC 3168 |
| WHERE HELD | Melbourne |
| BEFORE | Peter Gaschk, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 13 December 2019 |
| DATE OF ORDER | 26 February 2020 |
| CITATION | Triple Z Property Group Pty Ltd v Monash CC [2020] VCAT 228 |

# Order

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application description is amended as follows:

Construction of a three-storey apartment building comprising 10 dwellings and basement parking.

1. Pursuant to section 127 (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: | Pink Architecture |
| * Drawing numbers: | Sheets TP 1.00, 2.00, 2.01, 3.00, 3.01, 3.02, 3.03, 3.04, 4.00, 4.01, 4.02, 5.00, 6.00, 7.00, 7.01, 7.02, 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 7.09, 7.10, 7.11 and 7.12 |
| * Dated: | 29 October 2019 |

1. In application P1382/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/50053 a permit is granted and directed to be issued for the land at 29 Dennis Street, CLAYTON VIC 3168 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Construction of a three-storey apartment building comprising 10 dwellings in a General Residential Zone Schedule 6.

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

# Appearances

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| For applicant | Mr Joe Grech, Town Planner with Human Habitats. He called the following witness:  Mr John-Paul Maina, Traffic Engineer from Impact |
| For responsible authority | Mr James Turner, Town Planner |

# Information

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| Description of proposal | Construction of a three-storey apartment building originally comprising 12 dwellings with basement parking. The number of dwellings was reduced to 10 dwellings by amended plans substituted at the VCAT hearing. |
| 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 (the Scheme) |
| Zone and overlays | General Residential Zone, Schedule 6 (GRZ6)  No overlays apply |
| Permit requirements | Clause 32.08-6: To construct two or more dwellings on a lot |
| Relevant scheme policies and provisions | Clauses 11, 11.03-1R, 15, 16.01-1S, 16.01-2S, 16.01-3S, 18.01-1S, 18.02-4S, 21.04, 21.08, 22.01, 22.05, 32.08, 52.06, 55, 65 and 71.02 |
| Land description | The review site is located on the northern side of Dennis Street, approximately 150 metres west of Blackburn Road and to the north east of the Clayton Activity Centre. The land is rectangular in shape, with a frontage of 16.7m, a depth of 43.7m and an overall area of approximately 733sqm.  The land is essentially flat with a 1.8m wide easement extending across the rear boundary. The site is currently occupied by a single storey brick dwelling and garage. There is an existing vehicle crossing at the western end of the frontage. Planting is informal, with trees and shrubs scattered over the site. A 1.0m high iron fence extends across the frontage of the site.  To the north the review site shares a boundary with the rear of 30 Morton Street which comprises two single storey brick dwellings. To the south (opposite) are predominantly single storey brick and weatherboard dwellings. To the east is 32 Dennis Street which comprises a single storey brick dwelling. To the west are two dwellings on a lot (single to the front and double storey to the rear).  Surrounding residential development is characterised by single storey detached 1950's brick and weatherboard dwellings, along with a number of more recently constructed dwellings comprising double storey dwellings and medium density housing developments in the broader area.  The site is located within close proximity to the Monash National Employment Cluster including Monash University, Monash Medical Centre and Clayton Activity Centre. |
| Tribunal inspection | Undertaken 4 December 2019 |

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

## What is this proceeding about?

1. This is an application by Triple Z Property Group Pty Ltd (the applicant) under s77 of the *Planning and Environment Act 1987,* for review of the Monash City Council’s (the council) Refusal to Grant a Planning Permit for the development and construction of a three storey apartment building, originally comprising 12 dwellings with basement parking at 29 Dennis Street, Clayton (the review site). Amended plans substituted at the hearing reduced the number of dwellings to ten. Other design changes have increased the respective setbacks along the rear and side boundaries with internal changes to dwellings.
2. The amended proposal comprises a mix of one- and two-bedroom dwellings across three storeys, above a basement car parking area with car stackers. Vehicular access is provided to the site by a single crossover to Dennis Street along the western boundary. At basement level there are 12 car parking spaces provided with eight spaces provided in car stackers. Ten storage spaces and bin area are also provided in the basement. At ground level Dwellings 1-4 are all two bedrooms. At first floor level Dwellings 5 and 7 are both three bedrooms with Dwelling 6 two bedroom. On the second floor, Dwellings 8 and 10 are two bedroom and Dwelling 9 is one bedroom. At ground level each dwelling has 35sqm of secluded private open space (SPOS) with the dwellings at first and second floor levels provided with balconies.
3. The applicant submits the amended proposal reduces the overall built form (including increasing setbacks) and reduces the number of dwellings. It says these changes provide an improved level of amenity to the proposed dwellings, increases opportunities for further landscaping along the side and rear boundaries and creates a greater separation between the proposal and adjoining properties. The applicant also relies on traffic evidence from Mr John-Paul Maina from Impact. A copy of his expert report was circulated to the Tribunal and the council in accordance with VCAT’s Practice Note.
4. The council’s refusal dated 3 June 2019 addressed three specific grounds that are summarised below:

* Ground 1: Objectives at clauses 15, 21.04, 22.01, and 22.05 were not satisfied;
* Ground 2: Clause 55 objectives were not satisfied; and
* Ground 3: Objectives of clause 52.06 were not satisfied, specifically the number of car spaces and an over reliance on corrective vehicle manoeuvres.

1. On 18 November 2019 and following assessment of the amended plans lodged by the applicant, the council issued notice it would no longer be contesting grounds 1 and 2 of its refusal and modified reference to the number of car spaces in ground 3.

## What are the key issues?

1. Based on the council’s modified grounds of refusal and submissions from the parties I consider this matter is now confined to the following key issue:

The proposal does not meet the objectives of clause 52.06 Car Parking of the Monash Planning Scheme in relation to the over reliance on corrective manoeuvres,

1. I have had the benefit of photographs, aerials and maps that form part of the written submissions provided by the parties at the hearing. I have also been assisted by my inspection of the review site and surrounds.
2. I consider the outstanding issue in this proceeding can be expressed as:

* Does the proposal achieve an acceptable car parking layout under clause 52.06 of the Scheme?

1. I am satisfied the proposed development is permissible subject to a planning permit within the GRZ6. I also find the proposal is appropriately located to a broad range of services and facilities, being in close proximity to the Monash National Employment Cluster including Monash University, Monash Medical Centre and Clayton Activity Centre.
2. Having considered the submissions, evidence and material from the parties, applicable local policies and provisions of the Scheme, I have determined to set aside the council’s decision and direct that a permit issue with conditions as set in Appendix A attached to this decision. I find the proposed car parking layout provides a satisfactory design response that meets the relevant provisions of clause 52.06 of the Scheme. My reasons for this decision follows.

## Does the proposal achieve an acceptable car parking layout under clause 52.06 of the Scheme?

1. The council submits the key issue in this review is poor car parking layout and functionality. It notes advice from its traffic engineers who assessed the proposal and found there was an inability to exit out of all of the car spaces located in the basement without corrective manoeuvres. It did not present any further traffic evidence on this matter at the hearing and relies on policy guidance at clause 52.06 which amongst other matters states:

* To ensure that car parking does not adversely affect the amenity of the locality.
* To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

1. The council considers the need for corrective manoeuvres in all of the car spaces is neither easy nor efficient use of the basement parking. It referred to a Tribunal decision of Member Patterson in *Damaskos v Monash CC* [2018] VCAT 1920. In that matter the Member considered the construction of four double storey dwellings with basement parking located at 140 Ferntree Gully Road, Oakleigh East. The Member noted:

In terms of access arrangements to the dwellings, I share Council’s concerns with the number of correcting manoeuvres required to enter and exit the site in a forward direction. As this is a site on Ferntree Gully Road, we do need to ensure cars can enter and entry (sic) the site in a forward direction. Whilst that can occur, the sheer number of corrective manoeuvres required indicates that this can’t occur in an easy or convenient manner.

The council noted that corrective manoeuvres in that proposal were required from three of the eight spaces located in the basement.

1. Council also submits that local policy at 21.08 (Transport and Traffic) requires that car parking be provided on site to satisfy the needs of users without causing detriment to the local amenity. A similar statement is contained at clause 22.01 (Residential Development and Character Policy) that states:

Design and locate car parking spaces to ensure they have minimal impact on pedestrian and vehicle movements both on-site and within the street.

1. The council says the basement parking arrangement and functionality does not provide a satisfactory planning outcome, providing an unacceptable parking layout and access to spaces.
2. The applicant submits the Scheme does not specify what constitutes an acceptable number of manoeuvres to access a car space. As part of its further information response it sought and lodged further traffic advice from the Traffix Group on this matter who noted:

AS/NZS 2890.1:2004 specifically allows for three-point entry and exit into 90-degree spaces for residential parking. This is consistent with good traffic engineering and common practice.

1. In addition to this assessment the applicant relies on the expert evidence presented by Mr John-Paul Maina who is a traffic engineer with Impact. His evidence is *‘that the car park design delivers an outcome that is of a high standard and creates a safe environment for users and enables easy and efficient use.’* In his evidence in chief Mr Maina explained the detailed process he undertook to reach his conclusions on this matter. This included a detailed set of Swept Path Analysis for each car space that confirmed access and egress to each car space was possible with a maximum of one correction manoeuvre. He also noted all spaces either satisfied or exceeded the dimension requirements under clause 52.06. This included standard spaces at 2.6m wide and 4.9m long with an access aisle width that exceeds 6.4m. All car stacker spaces included a minimum width of 2.6m, length of at least 5.5m accessed from an aisle of at least 6.7m. His evidence also included a detailed assessment against all relevant Design Standards contained in clause 52.06-9 and found all relevant Design Responses were satisfied. In response to the council’s concerns regarding over reliance on corrective manoeuvres, Mr Maina’s evidence is that AS2890.1:2004 enables correction manoeuvres for Class 1A parking. His evidence is that *‘this concession recognises that these developments (classified as Class 1A developments) have low car parking turnover and users are generally prepared to accept a correction manoeuvre when entering or leaving car spaces.’*
2. I find Mr Maina’s evidence compelling and his detailed analysis thorough. I accept his conclusions that the traffic entering and leaving this proposed development is considered at the lower impact scale, particularly given Dennis Street is a local access road. In this regard I draw an important distinction in the matter considered by Member Patterson where proposed development was located on a Road Zone Category 1. In any event, I accept Mr Maina’s evidence that the car park layout and design deliver an outcome that is of high standard and creates a safe environment for users. This includes his expert opinion that access and egress to each car space in the basement parking area was possible with a maximum of one correction manoeuvre.
3. I am therefore satisfied the proposed development achieves a satisfactory response to the relevant provisions of clause 52.06. I find the proposed car parking layout and function will not adversely affect the amenity of the locality or result in traffic safety concerns in Dennis Street. A permit should issue with conditions.

## What conditions are appropriate?

1. At the conclusion of the hearing the parties discussed the draft planning permit conditions circulated by the council. The applicant sought a change to the permit description to remove reference to the number of dwellings on the site. I do not agree with this change given there is a direct relationship between the number of car spaces and number of dwellings on the site. Parties also raised the issue of an ‘induction program’ on the use of car stackers for future occupants. I was not presented with any conditions that in my view could be placed on the planning permit to ensure all occupants undertook such training. I make no further finding on this matter, noting commentary from the parties that this outcome could also be addressed through other legislation requirements.
2. The applicant considered condition 8 on the draft permit could be removed. This condition deals with impacts on the amenity of the area through transport of materials, appearance of the building, works or materials, emission of noise, light, smells etc and presence of vermin. I consider this condition is not necessary and more appropriate for a use associated with commercial and industrial type activities. I will delete this condition. The applicant also raised concerns over condition 9 that deals with the proposed construction times associated with the permitted development, particularly the restriction between Saturday – between 9am to 1pm. The applicant suggested this should read 5pm. I agree the extension to 5pm is appropriate given the context and setting of the site. I will amend the condition accordingly.
3. I find the remainder of the draft conditions appropriate subject to some minor editing and renumbering.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions shown in Appendix A attached to this decision.

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

# Appendix A – Permit Conditions

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| Permit Application No | TPA/50053 |
| Land | 29 Dennis Street CLAYTON VIC 3168 |

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| What the permit allowS |
| In accordance with the endorsed plans:   * Construction of a three-storey apartment building comprising 10 dwellings in a General Residential Zone Schedule 6. |

## Conditions

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. The submitted plans must clearly delineate and highlight any changes. 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 substituted at VCAT dated 29 October 2019 but modified to show:

* 1. Sectional diagrams to show the location and dimensions of the car stacker pits to the satisfaction of the responsible authority. The depth of the pits must be sufficient to accommodate the stackers with no increase to floor levels or the height of the building.
  2. Technical specifications (including diagrams) for the car stackers and associated features to the satisfaction of the responsible authority.
  3. The location, dimensions and materials of meter boxes to the satisfaction of the responsible authority.

1. The development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.
2. 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. Provision of a canopy trees with spreading crowns within the private open space areas of the site.
   2. planting to soften the appearance of hard surface areas such as driveways and other paved areas.
   3. 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.
   4. the location and details of all fencing.
   5. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
   6. details of all proposed hard surface materials including pathways, patio or decked areas.
3. 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.
4. Prior to the commencement of works on the site, the owner shall prepare a Waste Management Plan for the collection and disposal of garbage and recyclables for all uses on the site. The Waste Management Plan shall provide for:

* The method of collection of garbage and recyclables for uses;
* Designation of methods of collection including the need to provide for private services or utilisation of council services;
* Appropriate areas of bin storage on site and areas for bin storage on collection days;
* Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas;
* Litter management.

A copy of this plan must be submitted to Council.

1. The nature strip tree must be protected by temporary rectangular wire fencing as per Australian Standards erected prior to commencement of works until completion.
2. 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.
3. The construction works associated with the permitted development must only be carried out during the following hours:

* Monday to Friday (inclusive) – 7:00am to 6pm; and
* Saturday – 9am to 5pm.

unless otherwise approved in writing by the responsible authority.

1. The proposed vehicle crossing is to be constructed in accordance with the Monash City Council standards.
2. The existing 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 the responsible authority.
3. All access doors to the system require the provision of a gate/door which are to be fully automated and linked to the car stacker operating system to ensure that there is no inadvertent access during the operation of the system.
4. The mechanical car stackers are to be maintained in a good working order and be permanently available for the parking of vehicles in accordance with their purpose, to the satisfaction of the responsible authority.
5. One copy of the plans for the drainage and civil works must be submitted to and approved by the Engineering Department prior to the commencement of works. The plans are to show sufficient information to determine that the drainage works will meet all drainage conditions of the permit.
6. 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.
7. 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
8. Once the development has started it must be continued and completed to the satisfaction of the responsible authority.
9. 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 is not started before 2 years from the date of issue*.*
* The development is not completed before 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. The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons. [↑](#footnote-ref-1)