VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No..P2022/2019 Permit no. TPA/49942  |
| CATCHWORDS |
| Section 80 of the *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone 6; Four double storey dwellings; impact of cantilevered sections of dwellings  |

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| APPLICANTs | Xiaojing Xu and Zhen Fang |
| responsible authority | Monash City Council |
| SUBJECT LAND | 7 Dunstan Street, Clayton |
| WHERE HELD | Melbourne |
| BEFORE | Juliette Halliday |
| HEARING TYPE | Hearing  |
| DATE OF HEARING | 13 March 2020 |
| DATE OF ORDER | 27 April 2020 |
| CITATION | Xu v Monash CC [2020] VCAT 468 |

# Order

### Conditions changed

1. The decision of the responsible authority is varied.
2. The Tribunal directs that planning permit TPA/49942 must contain the conditions set out in planning permit TPA/49942 issued by the responsible authority on 21 August 2019 with the following modification:
	1. Condition 1(a) is deleted.
3. The responsible authority is directed to issue a modified planning permit in accordance with this order.

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| **Juliette Halliday****Member** |  |  |

# Appearances

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| For Xiaojing Xu and Zhen Fang | Mr Panos Nickas, lawyer of Nickas Legal |
| For Monash City Council | Mr Christopher Marulli, town planner of Monash City Council |

# Information

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| Description of proposal | Construction of four dwellings on a lot |
| Nature of proceeding | Application under section 80 of the *Planning and Environment Act 1987* – to review the conditions contained in the permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone, Schedule 6Special Building Overlay |
| Permit requirements |  Clause 32.08-6 |
| Land description | The land is located on the north side of Dunstan Street, with Clayton Road approximately 300 metres to its east and Prince Charles Street to its west. It has a frontage to Dunstan Street of 20.12 metres and a depth of 48 metres. It has an overall size of approximately 959 square metres. To the east at No. 9 Dunstan Street are three, single-storey dwellings. To the west at No. 5 Dunstan Street are four, single storey dwellings. There is a single-storey dwelling to the north at No. 10 Faulkner Street.  |
| Tribunal inspection | Unaccompanied on 11 April 2020  |

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

## What is this proceeding about?

1. The applicants applied to the Monash City Council (**Council**) for a planning permit to construct four, two-storey dwellings (**proposal**) at No. 7 Dunstan Street, Clayton (**land**). The permit application was the subject of notice and no objections were received.
2. Council granted a permit for the development subject to condition 1(a) (**condition 1(a)**) that the plans be amended to show:

The first-floor areas of all dwellings to be reduced to ensure that there is no cantilevering over the common driveway, with no reduction in the boundary setbacks.

1. The applicant has applied to the Tribunal under s 80 of the *Planning and Environment Act 1987* to review the Council’s decision. Amongst other things, the applicants submit that condition 1(a) should be deleted from the planning permit because it is unnecessary, unreasonable and without proper justification.
2. Having considered the submissions of the parties, the relevant provisions of the Act, the Monash Planning Scheme (**Scheme**), the documents filed with the Tribunal and having inspected the site and surrounds, I conclude that the proposal without the modifications referred to in condition 1(a) achieves an acceptable outcome. My reasons for reaching this conclusion follow.

## What are the key issues?

1. The key issue in this matter is whether condition 1 (a) is required in light of the site context and the relevant provisions in the Scheme.

## proposal and site context

1. The land and its immediate surrounds are described at page 2 of this decision.
2. The proposal is for the construction of four, two-storey dwellings, constructed in a tandem arrangement with Unit 1 facing Dunstan Street. Each dwelling has a two-car garage at ground level accessed from a driveway along the eastern boundary of the land except for Unit 4 which has a single car garage (and a tandem car parking space).
3. At ground level each dwelling has an open plan kitchen, living and dining area, a bedroom, a bathroom, a laundry and secluded private open space.
4. At first floor, the dwellings are provided with the following:
	1. Unit 1: three bedrooms (one with an ensuite), a bathroom and a rumpus room;
	2. Unit 2: three bedrooms and two bathrooms;
	3. Unit 3: three bedrooms (one with an ensuite), a bathroom and a powder room;
	4. Unit 4: three bedrooms and one bathroom.
5. The materials and finishes include brick and render at ground floor level and painted render and composite rendered panels at first floor level. The proposal is of a contemporary design with a tiled, pitched roof.
6. The proposal includes first floor elements which project over the ground floor driveway as follows:
	1. Unit 1: Bedroom 2 projects over the driveway approximately 1.1 metres for an extent of approximately 4.2 metres;
	2. Unit 2: Bedroom 2 projects over the driveway approximately 1.2 metres for an extent of approximately 3.9 metres;
	3. Unit 3: the powder room projects over the driveway approximately 1 metre for an extent of approximately 2 metres; and
	4. Unit 4: Bedroom 2 projects over the driveway up to approximately 2 metres for an extent of about 2 metres.
7. An extract from a plan showing the extent of the first floor (shown as the red dotted line) projecting over the ground floor is shown in Figure 1 below.



Red dotted lines showing cantilevered elements

**Figure 1**

1. The land is located within a residential area which has a mixture of built form including 1950’s single-storey weatherboard and brick dwellings and multi-unit development including single-storey brick villa units such as those directly adjoining the land at Nos. 3 and 5 Dunstan Street. Also present in Dunstan Street is a development of ‘walk-up’ flats and more recently constructed two-storey townhouses.
2. The Clayton Major Activity Centre[[2]](#footnote-2) is located approximately 300 metres to the east of the land and it is within about 500 metres of the Clayton train station.

## Policy context

1. Clause 21.04 of the Scheme (Residential development) establishes eight categories of residential areas. They are classified in clause 21.04-1 according to their development potential, with Category 1 (Activity and neighbourhood centres) being areas with the greatest development potential and Category 8 (Garden city suburbs) being areas suitable for incremental change only. The land is in Category 3: Monash National Employment Cluster which is identified as an area with future development potential.
2. Strategies at clause 21.04-3 include ensuring that new residential development provides a high level of amenity and supporting substantial residential growth within the Monash National Employment Cluster to provide housing closer to where people work and study.
3. To achieve the objectives and strategies at clause 21.04, the Scheme states that local planning policies (including clause 22.01, Residential character) should be used to improve the standard and quality of the design of new development.[[3]](#footnote-3)
4. The objectives and policies at clause 22.01 (Residential development and character policy) seek as follows (amongst other things):
* To encourage new development to achieve architectural and urban design outcomes that positively contribute to neighbourhood character having particular regard to the applicable preferred future character statement for the area.[[4]](#footnote-4)
* Minimise the impact of visual bulk to neighbouring properties, through suitable setbacks from adjacent secluded private open space to enable the provision of screening trees, and scaling down of building form to the adjoining properties.[[5]](#footnote-5)
* Respect the height, scale and massing of existing dwellings in the neighbourhood.[[6]](#footnote-6)
1. Clause 22.01 contains the preferred future character statement for the Monash National Employment Cluster and Clayton Activity Centre – Housing Diversity Area which I have considered but do not recite here. The decision guidelines at clause 22.01-5 include consideration of whether the development will have an adverse impact on the amenity of adjoining properties.
2. Schedule 6 to the GRZ contains neighbourhood character objectives which encourage development that respects sensitive residential interfaces and minimises building mass and visual bulk in the streetscape (amongst other things). It also contains decision guidelines which I have considered but do not recite here. Schedule 6 states that a new wall not on or within 200mm of a rear boundary should be setback at least 4 metres. Otherwise, standard B17 at clause 55.04-1 regarding side setbacks is unmodified.

## Is condition 1(a) required?

1. The Council says that condition 1(a) is justified for the following reasons:
	1. it is necessary to ensure that there is no cantilevering over the driveway to reduce the built form of the development at the first floor and to improve the interface from the common driveway and the neighbouring properties to the east;
	2. the building mass of the first-floor to the east façade requires higher degrees of articulation to meet the prevailing built form of single-storey and articulated double storey developments within the streetscape;
	3. the purpose of condition 1(a) was to achieve a design which has a degree of articulation and separation between the ground floor and first floor levels, consistent with other similar developments in the area;
	4. the cantilevered appearance of the east façade is inconsistent with the existing neighbourhood character where development is generally set back, or in line with the ground floor footprint; and
	5. the first floor should be recessed to mitigate the visual bulk of the first storey of the proposal.
2. I find that the impact of the cantilevered sections of the upper level of the proposal is acceptable, and that condition 1(a) is not required for the reasons discussed below.
3. In my view the cantilevered sections of the dwellings have been designed to respond acceptably to their context. Whilst I did not observe examples of developments in Dunstan Street with cantilevered elements at the upper level, this is not necessarily a reason to prevent the introduction of such elements in new development, provided such elements respond to their surrounding context and the relevant provisions of the Scheme. It is my view the cantilevered sections of the dwellings adequately respond to the Scheme provisions and the surrounding context.

### Impact on streetscape

1. The cantilevered segments of Units 1 and 2 are setback approximately 8 and 19 metres (respectively) from the frontage of the land and are positioned behind the first floor front walls of Units 1 and 2. The cantilevered elements of Units 3 and 4 are set back approximately 28 and 37 metres (respectively) from the street. These factors minimise the visibility of the cantilevered sections of the upper levels from the street. I conclude that the cantilevered elements of the proposal are an acceptable outcome from a streetscape perspective, and that they are consistent with the objective at Schedule 6 to the GRZ which seeks to minimise building mass and visual bulk in the streetscape.

### Impact on properties to the east

1. The cantilevered sections of the proposal are located on the eastern façade of the dwellings. They are oriented towards the adjoining properties to the east at Nos. 1-3/9 Dunstan Street. These properties are developed with three, single-storey units which each have secluded private open space adjoining the common boundary with the land.
2. Relevantly, the upper levels of the proposed dwellings (including the cantilevered sections) comply with the numeric requirements of Standard B17 at clause 55.04-1 of the Scheme (Side and rear setbacks objective). They are setback from the eastern boundary as follows:
	1. Unit 1: approximately 5.3 metres;
	2. Unit 2: approximately 5.1 metres;
	3. Unit 3: approximately 5.1 metres;
	4. Unit 4: approximately 3.2 to 4.9 metres.
3. I consider that the impact of the cantilevered sections of the proposal on the amenity of the adjoining properties to the east at Nos. 1-3/9 Dunstan Street is acceptable for the following reasons:
	1. the cantilevered section of the upper level of proposed Unit 1 is located opposite the garage of No. 1/9 Dunstan Street and it is limited to an extent of approximately 4.2 metres;
	2. although the upper levels of Units 2 and 3 (including the cantilevered sections) are located opposite the private open space of No. 2/9 Dunstan Street, the cantilevered sections of Unit 2 and Unit 3 are not extensive, being approximately 3.9 and 2 metres respectively;
	3. although the upper level of Unit 4 is located opposite the secluded private open space of No. 3/9 Dunstan Street, the cantilevered section is restricted to an extent of about 2 metres, and there is variation in the setback of the cantilevered section of Unit 4 of between approximately 3.2 to 4.9 metres;
	4. the cantilevered sections of the upper levels of each dwelling are not closer to the eastern boundary than any other part of the first floor; they sit behind the ground floor eaves, and they will not generate excessive massing at the upper level, which in my view is consistent with the outcomes sought in the policy at clause 22.01-3 of the Scheme which (amongst other things) seeks to minimise the impact of visual bulk on neighbouring properties;
	5. the cantilevered sections of Units 3 and 4 provide shelter at the entrances to those dwellings. They are not excessive in my view and they contribute to the articulation of Units 3 and 4 at the upper level; and
	6. the overall design of the first floor of the proposal incorporates sufficient modulation and separation between the dwellings. This, together with the adequate articulation at the upper levels; the variation in materials and the setbacks from the eastern boundary (referred to above) means that the cantilevered sections of the upper levels of the proposal achieve an acceptable impact on the amenity of the adjoining properties to the east.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is varied by deleting condition 1(a) on planning permit TPA/49942.

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| **Juliette Halliday****Member** |  |  |

1. 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-1)
2. Refer to the ‘List of activity Centres’ at page 53 of the *Metropolitan Planning Strategy: Plan Melbourne 2017-2050*, The State of Victoria Department of Environment, Land, Water and Planning 2017. [↑](#footnote-ref-2)
3. See clause 21.04-3. [↑](#footnote-ref-3)
4. Clause 22.01-2 [↑](#footnote-ref-4)
5. Clause 22.01-3 [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)