 VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P447/2021Permit Application no.TPA/51424  |
| CATCHWORDS |
| Section 77 of the *Planning and Environment Act 1987*: Monash Planning Scheme; Residential Growth Zone, Schedule 3; Apartments; Amenity; Landscaping  |

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| **Applicant** | Ormond Road (Clayton) Pty Ltd |

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| **Responsible Authority** | Monash City Council |
| **Referral Authority** | Head, Transport for Victoria |

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| SUBJECT LAND | 1419 Centre RoadCLAYTON VIC 3168 |

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| HEARING TYPE | Hearing |

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| DATE OF HEARING | 30 August and 21 September 2021 |

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| DATE OF interim ORDER | 13 January 2022 |
| DATE OF ORDER | 7 February 2022 |

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| CITATION | Ormond Road (Clayton) Pty Ltd v Monash CC [2022] VCAT 45 |

# Order

**Amend permit application**

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

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| Prepared by: | * Bello
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| Drawing numbers: | * TP01 to TP17
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| Dated: | * 21 July 2021, Revision B, VCAT Issue
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### Permit granted

1. In application P447/2021 the decision of the responsible authority is set aside.
2. In planning permit application TPA/51424 a permit is granted and directed to be issued for the land at 1419 Centre Road, Clayton in accordance with the endorsed plans and the conditions set out in Appendix A.
3. The permit allows:
* Construction of two or more dwellings on a lot;
* Create or alter access to a road in a Transport Zone 2.

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| Juliette Halliday**Member** |  |  |

# Appearances

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| For Ormond Road (Clayton) Pty Ltd  | Mr Daniel Bowden, Director, Song Bowden Planning Pty Ltd. He called the following witnesses:* Mr Alastair Campbell, Associate Urban Designer, Hansen Partnership Pty Ltd
* Mr John Patrick, landscape architect, John Patrick Landscape Architects Pty Ltd.
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| For Monash City Council | Mr Darren Wong, Lawyer, Planology  |
| For Head, Transport for Victoria | No appearance |
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# Information

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| Description of proposal | Construction of 11 apartments in a three-storey apartment building and alter access to a road in a Transport Zone 2. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit.  |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | Residential Growth Zone, Schedule 3 (**RGZ3**) |
| Permit requirements | Clause 32.07-5, construct two or more dwellings on a lotClause 52.29-2, create or alter access to a road in a Transport Zone 2 |
| Land description | The land is located on the north side of Centre Road, with Pullyn Street to the east and Thomas Street to the west. It has a frontage to Centre Road of 15.8 metres, a depth of 44.12 metres and an overall area of 697 square metres. A single brick post-war dwelling accessed by a vehicle crossing with associated outbuildings exists on the land. The land has a slight fall to the north. To the west at No. 1417 Centre Road is a single-storey dwelling accessed by a vehicle crossing with secluded private open space and associated outbuildings to the rear, and four canopy trees along the common boundary with the subject land. To the east at No. 1421 Centre Road is a single-storey dwelling located on the corner of Centre Road and Pullyn Street with secluded private open space and various outbuildings to the rear. There are seven existing trees along the common boundary with the subject land. To the north at No. 18 Belmont Avenue is a single-storey brick dwelling with secluded private open space to the rear (directly adjoining the northern boundary of the land). To the south is Centre Road. Opposite the land to the south are commercial and industrial buildings which have hard stand areas, high permeable fences and limited landscaping visible from Centre Road. On the southern side of Centre Road is the City of Kingston. |
| Tribunal inspection | Unaccompanied, after the hearing.  |

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

## What is this proceeding about?

1. The application is brought by Ormond Road (Clayton) Pty Ltd (**applicant**) under s 77 of the *Planning and Environment Act 1987* (**Act**) seeking a review of the decision of the Monash City Council (**Council**) to refuse to grant a permit for the development of land at 1419 Centre Road, Clayton (**land**).
2. The proposal is for the construction of 11 apartments in a three-storey building (with basement below) and to alter access to Centre Road. The Council refused the application for the permit on the basis that the proposal:
	1. Is inconsistent with policies in the Monash Planning Scheme (**Scheme**) regarding residential development;
	2. Does not adequately satisfy the requirements within the Scheme at Clause 55;
	3. Is inconsistent with objectives within the RGZ3;
	4. Will adversely impact the landscape character of the area; and
	5. Is an overdevelopment and represents a poor design outcome.
3. The applicant submitted that the proposal:
	1. Is consistent with residential development policies in the Scheme;
	2. Adequately satisfies the requirements of Clause 55 of the Scheme; and
	3. Is consistent with the design objectives of the RGZ3; it would not adversely affect the landscape character of the area and it is an appropriate development of the land.
4. Having considered the submissions of the parties, the evidence of the applicant and having inspected the site and surrounds, I conclude that the proposal with some modifications achieves an acceptable planning outcome. My reasons follow.

## Procedural issues & rulings

1. Mr Stewart Ah-Kan filed a statement of grounds with the Tribunal although he indicated he did not wish to participate in the hearing.[[2]](#footnote-2) In reaching my conclusions in this matter, I have taken Mr Ah-Kan’s statement of grounds into consideration.
2. By order dated 13 January 2022, I gave the parties the opportunity to make submissions regarding any implications arising from the gazettal of Amendment VC174 to the Scheme relating to this proceeding.
3. I have considered the information filed by the Council in response to the interim order and not that the applicant did not file further submissions in this regard.

##  Proposal and site context

1. The land and its surrounds are described at page 3 of this decision.
2. The key elements of the proposal are as follows:
	1. Four, two-bedroom apartments at ground floor level, each having an area of secluded private open space ranging in size between 15 to 43 square metres;
	2. Four, two-bedroom apartments at first floor level with balconies ranging in size between 10 to 14 square metres;
	3. Two, two-bedroom apartments and one, one-bedroom apartment at second floor level with balconies ranging in size between 10 to 15 square metres;
	4. A basement car park with vehicle accessway from Centre Road adjacent to the western boundary of the land. Eleven car parking spaces are proposed in the basement. Four bicycle spaces; waste storage and eleven storage cages are proposed within the basement;
	5. A minimum front setback of 4 metres at ground floor level; a minimum rear setback of 4 metres; side setbacks at ground floor level between approximately 1 to 4 metres;
	6. A height of approximately 9.4 metres;
	7. Site coverage of 67.5% and permeability of 27.8%; and
	8. A contemporary design expression with a modulated massing arrangement. The materials and finishes include face brick (dark colour) and render; BCG Duragroove cladding (including ‘Monument’, ‘Dark Grey’ and ‘Dune’ colours); Matrix cladding; Colourbond sheeting roof and powder coated aluminium framed windows.
3. An extract of the south elevation (facing Centre Road) is set out in Figure 1 below. An extract from the ground floor plan is set out in Figure 2 below (noting that north is to the left-hand side of the page).



**Figure 1**

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**Figure 2**

1. The subject land is located:
	1. Within a residential area comprising a mix of original post-war detached dwellings which is undergoing a level of change with the presence of more recently constructed dual occupancy development; townhouse developments and apartments. A six to seven storey apartment development is presently under construction at 1437 Centre Road (to the east). To the south-east the ‘Jackson Green’ development (located in the City of Kington) comprises a mix of two and three-storey attached townhouses and apartment buildings of between four to nine storeys in height;
	2. About 180 metres to the east of the junction of Centre Road with Clayton Road, with the commercial centre of the Clayton Activity Centre extending to Clayton Station and beyond. Clayton Station is about 700 metres to the north of the land;
	3. Within about 2 kilometres of Monash University Clayton Campus (located to the north).
2. A permit was granted at the direction of the Tribunal for the development of a four-storey apartment building on the three lots directly to the west at No. 1413-1417 Centre Road.[[3]](#footnote-3) This development did not take place. The Council informed the Tribunal that no request had been made to the Council to extend the permit after it expired, and that the permit for the development of the adjoining land at 1413-1417 Centre Road has expired and cannot now be extended.

## What are the key issues?

1. Having regard to the submissions presented to the Tribunal at the hearing, the key issues for consideration are:
	1. Is the visual presentation of the proposal acceptable?
	2. Will the proposal provide acceptable levels of internal amenity and secluded private open space for future residents?
	3. Is the proposed landscaping response acceptable?

## What is the planning and policy context?

### Zoning

1. The land is within the RGZ3, the purposes of which include the following:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To provide housing at increased densities in buildings up to and including four storey buildings.

To encourage a diversity of housing types in locations offering good access to services and transport including activity centres and town centres.

To encourage a scale of development that provides a transition between areas of more intensive use and development and other residential areas.

To ensure residential development achieves design objectives specified in a schedule to this zone.

…

1. The schedule to the RGZ3 specifies the following design objectives:

To facilitate housing growth in the form of apartment developments of a high quality design and finish.

To ensure developments are constructed within an open garden setting through the retention and planting of vegetation, including canopy trees.

To ensure that the height, scale and form of development respects any sensitive residential interfaces and minimises the appearance of visual bulk.

1. Several of the requirements of Clause 55 are varied by the schedule to the RGZ3 as follows:
	1. Standard B6 is varied so that the minimum street setback is 4 metres;
	2. Standard B13 is varied to require the retention or provision of at least one canopy tree with a minimum mature height equal to the height of the proposed building or 10 metres, whichever is the greater;
	3. Standard B17 is varied to require the rear setback to be 3 metres for the first 2 storeys plus 2 metres for the third storey;
	4. Standard B28 is varied to require private open space with an area of 40 square metres, with one part of the private open space at the side or rear of the apartment with a minimum area of 35 square metres, a minimum width of 3 metres and convenient access from a living room.
2. The permit application was lodged before 20 December 2021. The transitional provisions at clause 32.07-5 of the Scheme regarding Amendment VC174 to the Scheme mean that the proposal is to be assessed based on the provisions of clause 55 as they stood immediately before 20 December 2021.
3. At the time of the permit application, the land was adjacent to a road in a Road Zone Category 1. Amendment VC205[[4]](#footnote-4) made changes to the Scheme including changing the Road Zone Category 1 to Transport Zone 2. A permit is required under clause 52.29-2 to create or alter access to a road in a Transport Zone 2. Under clauses 52.29-4 and 66.03 an application must be referred to the Head, Transport for Victoria, who is the determining referral authority.

### State and local planning policy

1. There are a range of State and local policies which contain objectives and strategies that are relevant to the application. The Council drew attention to the following policies in the Scheme:
	1. Clause 15.01-2S which seeks to achieve building design outcomes that contribute positively to the local context and enhance the public realm through strategies such as minimising the detrimental impact of development on neighbouring properties, the public realm and the natural environment and which states that the *Apartment Design Guidelines for Victoria[[5]](#footnote-5)* (**Apartment Guidelines**) are to be considered ‘as relevant’;[[6]](#footnote-6) and
	2. Clause 16.01-1S which seeks to facilitate well-located, integrated and diverse housing that meets community needs through strategies such as encouraging higher density housing development on sites that are well located in relation to jobs, services and public transport; encouraging development of well-designed housing that provides a high level of internal and external amenity, and which states that the Apartment Guidelines are to be considered ‘as relevant’.
2. Other provisions of the scheme setting out policies which seek to provide further guidance about the location and form of housing growth. These include the following policies:
	1. Clause 21.01-2, in which garden city character is said to be a key influence in planning decisions. Clause 21.01-2 states that policies and provisions have been developed to ensure that new development provides suitable setbacks, appropriate site coverage and site permeability and sufficient open space areas to allow for tree retention and new planting to support garden city character;
	2. Clause 21.01-3 which seeks to direct residential growth to activity centres and the Monash National Employment and Innovation Cluster (amongst other places)[[7]](#footnote-7) and states that the garden city character of Monash is a key consideration when assessing development applications;[[8]](#footnote-8)
	3. Clause 21.04-1 which places the land within both ‘Category 2: Accessible Areas’ and ‘Category 3: Residential Land in the Monash National Employment Cluster’ which are areas with ‘future development potential’;
	4. Clause 21.04-3 which supports substantial residential growth within the Monash National Employment Cluster to provide housing close to where people work and study;[[9]](#footnote-9)
	5. Clause 22.01-2 which seeks to direct residential growth to activity centres and the Monash National Employment Cluster (amongst other places);[[10]](#footnote-10)
	6. Clause 22.01-3 which 9amongst other things) seeks to provide sufficient and well located private open space, primarily unencumbered by easements, to provide for vegetation and large trees to be retained or planted within front, side and rear setbacks and secluded open space areas;
	7. Clause 22.01-4 which places the land within the character type ‘Housing Growth Area – Clayton Activity Centre and Monash National Employment Cluster’ and contains the preferred future character statement for this area:

The scale of new residential development will generally comprise larger footprint apartment development of a high-quality design and finish. Some infill town house and unit development will also occur.

Where possible on larger sites, developments will be multi-level, and set in open gardens. Although setbacks from all boundaries will be less than is common in other parts of Monash, the developments will ensure the incorporation of well-maintained landscaping to address the garden city character, albeit in a more urban form.

1. Whilst the purposes of the RGZ do not encourage development that respects neighbourhood character, the Council’s position is that in this case, the garden city character which is sought in policies in the Scheme is expected to be understood in a robust context with a high quality design and within an open garden setting. Clause 22.01-3 encourages consolidation of sites to achieve residential intensification where this is specifically encouraged by the relevant zoning schedule. It is the Council’s submission that this policy is relevant because the schedule to the RGZ3 encourages intensification of the land.
2. The *Clayton Activity Centre Precinct Plan (January 2020)* was adopted by the Council on 28 January 2020. It indicates that the land is within the ‘residential intensification’ precinct with preferred building heights along Centre Road up to six storeys.[[11]](#footnote-11) Council’s submission is that this document is not determinative because it has not received Ministerial authorisation, but that it is relevant to appreciate the strategic directions being pursued.

## previous Tribunal decision

1. A proposal to develop the land was the subject of an application to the Tribunal for review of a refusal to grant a permit in 2019. The proposal was for the construction of seven three-storey apartments with all car parking at ground level. The Tribunal affirmed the Council’s decision and a permit was not granted.[[12]](#footnote-12) The Tribunal found that the proposal failed to meet the relevant design objective due to the unacceptable landscaping on the eastern boundary, the unacceptable internal amenity and its difficulty in accessing the garage of Apartment 7. Amongst other things, it said that these issues derived from the combination of the site’s width and the side-loaded design which was proposed.[[13]](#footnote-13)
2. The Tribunal has established principles to determine how a proposal responds to a previous decision. Relevant factors to consider when reviewing an application that is similar to a proposal that has been the subject of previous Tribunal findings are:
* significant changes in the application itself;
* changes in the circumstances of the land and its surrounds;
* changes in planning policy; and/or
* changes in the interpretation of the facts or law relevant to the Tribunal’s consideration.[[14]](#footnote-14)
1. In *Sprut v Stonnington CC*[[15]](#footnote-15) the Tribunal distinguished between a ‘classic repeat appeal’ and a ‘correcting’ repeat appeal - that is, where the Tribunal has refused an earlier application but indicated a modified form of development or changes that might be acceptable, and the repeat appeal comprises a genuine attempt to address those issues.[[16]](#footnote-16) The applicant and the Council agree, and I accept that the proposal in this case is a ‘correcting’ repeat appeal.
2. Relevant to my consideration is what was said in *Sprut* regarding the Tribunal’s role in repeat appeals:

…irrespective of whether the repeat appeal is in the nature of a ‘classic’ or ‘correcting’ repeat appeal, the role of the Tribunal is not to determine whether the proposal before it would have satisfied the earlier (and perhaps differently constituted) Tribunal, nor to summarily determine the matter solely by reference to the *Reichert* principles. This is a sometimes misunderstood notion. As *Amoco* itself indicated, the role of the Tribunal is to still consider the new application before it on its merits but, in doing so, to give great weight to the Tribunal’s decision on the earlier application having regard to the usual principles that have evolved for this purpose.[[17]](#footnote-17)

1. I must decide the application on its merits, and I must give weight to the previous decision of the Tribunal in doing so.
2. In this regard, the applicant submits that it has attempted to respond in good faith to the criticisms of the Tribunal in the design of the proposal and that the shift from a terrace style development to an apartment typology with basement was seen as providing a greater opportunity to respond to the issues of concern raised in the previous decision, especially when combined with the robust nature of the Centre Road location.
3. The Council submits that:
	1. Whilst the proposed housing typology has changed, (from townhouses to apartments) the overall built form of the proposal remains comparable to that considered in the previous decision;
	2. There has not been a material change to the planning scheme controls or the strategic context of the land;
	3. The previous decision provides important guidance regarding the approach that should be taken towards the proposed design, such as the land’s interfaces and internal amenity considerations;
	4. Some new issues have arisen that were not present in the previous proposal due to the change in apartment typology.
4. I now turn to my findings regarding the key issues in relation to this matter.

## Is the visual presentation of the proposal acceptable?

1. Amongst other things, the Council submits as follows:
	1. The built form that is proposed to the adjoining properties is substantial and unacceptable and the considerable built form will dominate the adjoining properties, particularly when the limited landscaping along these interfaces is considered;
	2. The approach to essentially cut off the corners of the third storey of the building in order to comply with Standard B17 is unsophisticated and leads to an awkward and lop-sided third storey;
	3. The Standard B17 envelope has been pushed to such an extent that screening and window elements now encroach;
	4. The failure to comply with the site coverage standard and private open space standard produces an unacceptable outcome; and
	5. Relying on clause 15.01-2S (Building design) there is little information included in the permit application about the quality, durability and maintenance of the proposed materials and cladding which is sought in the Apartment Guidelines.
2. It is the applicant’s submission that whilst redevelopment of land that is generally in accordance with the purposes of the RGZ will result in a significant change to the outlook and amenity for adjoining neighbours. It also submits that in areas designed for substantial change in the RGZ, the amenity expectations of neighbours must be tempered against reasonable built form expectations for an area where buildings of up to four storeys are contemplated.
3. Mr Campbell’s evidence is that the extent of visual bulk is acceptable and that:
	1. The proposal presents to the three adjoining residential properties to the east, west and north as a three-storey form which complies with Standard B17; and
	2. The top level is recessive and comprises a mansard roof profile along the eastern and western elevations, in order to ensure that the upper level falls within the B17 profile. It also enables the upper level to be ‘read’ as part of the roof form.
4. The proposal generally complies with Standard B17 regarding side and rear setbacks with the exception of some aspects of the proposal such as screens and windows which encroach into the setbacks. I consider this outcome is acceptable because the side and rear setbacks adequately limit the impact of the proposal on the amenity of existing adjacent dwellings. It is my view that the impact of the western, eastern and northern elevations in terms of visual bulk has been acceptably managed for the reasons set out below.
5. I consider that the proposal will have an acceptable impact on the property to the west at No. 1417 Centre Road, for the following reasons:
	1. The setback from the western boundary is between approximately 1 to 3 metres at ground floor level, increasing up to 3.5 metres at the second floor level. These setbacks will assist to diminish the impact of the visual bulk of the proposal when viewed from the west;
	2. The western elevation has a central rebate which will provide a ‘break’ in the western façade of the building; and
	3. There is adequate articulation between the first and second floor levels, as they will present to the property to the west (above the fence line).
6. I consider that the proposal will have an acceptable impact on the property to the east at No. 1421 Centre Road, for the following reasons:
	1. The setback from the eastern boundary is between approximately 1 to 4 metres. This, in combination with the use of articulation and modulation between the first and second floor levels will create a visually acceptable built form presentation to the property to the east;
	2. The central rebate to the lift and stair core will divide the eastern façade into two main portions; and
	3. Landscaping can be introduced to the central courtyard of Apartment 1 adjoining the lift and stair core as set out in the evidence of Mr Patrick (being a Yellow Gum which can grow to a height of 10 metres).
7. I consider that the proposal will have an acceptable impact on the property to the north at No. 18 Belmont Avenue, for the following reasons:
	1. There is a setback of 4 metres at ground floor level that maintains an open space corridor;
	2. An increase in the setback of the balcony balustrades at first and second floor level by 0.5 metres was suggested by Mr Campbell when he gave evidence, so that a 9 metre separation between the first and second floor levels of the proposed building and a new building on the land to the north can be achieved. I consider that this is an appropriate outcome in terms of equitable development and that it will assist to minimise the impact of the visual bulk of the proposal on the property to the north;
	3. The use of balconies at first and second floor levels will create a visually acceptable built form; and
	4. Landscaping can be introduced along the northern boundary as set out in the evidence of Mr Patrick, including two Crepe Myrtle trees which can grow to a height of 8 metres.
8. The proposed second storey is recessed from the levels below, and the upper level generally falls within the Standard B17 profile. In my view the setbacks provided adjacent to the adjoining properties are appropriate and will not result in an unreasonable level of visual bulk. What will be visible above the fence from the adjoining properties is an articulated three storey built form with a variety of materials and colours and setbacks that generally comply with Standard B17. In this context, in which four storey development is possible, I consider that the proposed design, including the chamfered roof profile along the eastern and western elevations will not result in unreasonable visual bulk impacts to the adjoining properties.
9. The site coverage proposed is 67.6%. Even though this exceeds that required by Standard B8 at clause 55.03-3 (Site coverage objective) by 7.6%, the proposal will have an acceptable outcome in terms of the landscaping treatment to be achieved across the site, as set out in Mr Patrick’s evidence and also in terms of the impact of the visual bulk of the building (for the reasons I have already provided above).
10. The proposed building façade design includes the entry door (and the door to Apartment 1) which are accessed from the front entry pathway, with a bedroom window within Apartment 1 having an outlook towards the front garden and Centre Road. I consider that the proposed building façade and external materials are acceptable in this context for the following reasons:
	1. The surrounding area includes original detached brick, weatherboard and rendered dwellings, and more recently constructed multi-unit developments and apartments which are finished in various materials including brick and rendered cladding. The commercial buildings on the south side of Centre Road are clad in various materials which include brick;
	2. Proposed materials and finishes include dark coloured face brick and BCG Duragroove cladding at ground floor level and light weight rendered cladding and BCG Duragroove cladding at the upper levels of the building in various colours including ‘Dark Grey’, ‘Dune’ Shale Grey’;
	3. The proposed external materials provide an acceptable response to the surrounding area through the use of variation in the types and colours of the external wall cladding and the articulation in the materials used. Based on the facts and circumstances of this matter, I have not been persuaded that the quality and durability of the materials proposed is unacceptable within this particular context; and
	4. The design of the building entrance provides an acceptable response to the public realm through the use of articulation in materials of the façade, including face brickwork and BCG Duragroove cladding. It will make an acceptable contribution to pedestrian interest through the use of these materials, the variation in the colours of the materials and the fenestration at ground floor level.
11. For these reasons I find that the visual presentation of the proposal is acceptable.

## Will the proposal provide acceptable levels oF internal amenity and secluded private open space for future residents?

1. Amongst other things, the Council submits that the proposal will produce poor internal amenity outcomes for future residents and unacceptable areas of secluded private open space for Apartments 1 and 2 and communal open space, as discussed under the relevant headings below.

### Use of screening

1. The Council submits that Apartments 7, 8, 10 and 11 rely excessively on highlight windows and screening and provide a very poor outlook for residents, and the arrangement of the angled windows is unclear. The Council submits that the extent of the proposal’s reliance on highlight windows and screens to windows and balconies to avoid overlooking does not reflect high quality, innovative or site responsive design.
2. Mr Campbell’s evidence regarding the angled windows proposed for the development (including for some bedroom windows in Apartments 7, 8, 10 and 11) is that the windows are external to the rooms; they have transparent glazing between the wall and the angled part of the window; that the angled part of the window has obscure glazing and that they have an angled sill to obscure downward views. It is his evidence that this allows views in a southerly or northerly direction from the windows, and obscures views into adjoining secluded private open space. It is also Mr Campbell’s evidence that consolidation of Apartments 10 and 11 could address issues regarding the internal amenity of these apartments. I have been persuaded that the consolidation of Apartments 10 and 11 is appropriate to address the issues raised by the Council regarding the internal amenity of these apartments.
3. Subject to the consolidation of Apartments 10 and 11, I consider that on balance, the screening proposed for Apartments 7, 8, 10 and 11 would adequately address overlooking whilst still allowing an acceptable level of internal amenity within these apartments for the following reasons:
	1. Access to daylight and outlook is available from the balconies of Apartments 7 and 8 (recognising that the balconies have 1.2 metre solid screens with a 0.5 metre angled louvres) and access to daylight is available from the windows to the kitchen and living area of Apartments 7 and 8 respectively;
	2. The bedrooms of Apartments 7 and 8 have access to daylight from the angled windows, or from unscreened windows;
	3. I consider that the consolidation of Apartments 10 and 11 would allow additional opportunities for windows to be provided to the living area of the consolidated apartment to provide access to daylight and an outlook;
	4. There will also be opportunities for an outlook from the balcony of the consolidated Apartments 10 and 11 (recognising that it will have a 1.2 metre solid screen with a 0.3 metre by 0.3 metre shelf).

### Size of living areas of Apartments 10 and 11

1. The Council submits that the extent of chamfering required to meet Standard B17 will unreasonably impact on the internal spaces of Apartments 10 and 11 and the internal volume of Apartment 11 will be unreasonably reduced. The living area of Apartment 10 would have dimensions of 2.46 metres by 3.75 metres leading to a total area of 9.23 square metres once circulation space is taken into account, which the Council says fails to comply with the minimum width and the minimum area for such spaces.
2. I am satisfied that the consolidation of Apartments 10 and 11 will allow for the Council’s concerns regarding the small size of the living area of Apartment 10 to be addressed, because it will enable an increase in the internal width of the consolidated apartment, and an increase in the size of the living area of this apartment.

### Secluded private open space for Apartments 1 and 2 and communal open space

1. The Council submits that the ground level secluded private open space areas provided for Apartments 1 and 2 are substandard for a number of reasons. Apartment 1 is provided with 32 square metres of secluded private open space and Apartment 2 is provided with 15 square metres of secluded private open space. The Council says that this is unacceptable because:
	1. The secluded private open space for Apartment 1 is constrained by the encroachment of the basement below and landscaping in this location is limited to a planter box;
	2. The paved alfresco area for Apartment 1 will be undercover and roofed, reducing the area of secluded private open space that might receive sunlight, and the planting of a tree in this space will further constrain access to sunlight;
	3. The secluded private open space of Apartment 1 will be subject to considerable overshadowing;
	4. The secluded private open space of Apartment 1 (amongst other things) will likely constrain future development of 1421 Centre Road, and a 5,500 litre water tank needs to be accommodated in this space;
	5. The secluded private open space of Apartment 2 is 15 square metres in area which is unacceptable for a two-bedroom apartment, and the first floor of the building overhangs one third of the space;
	6. The secluded private open space of Apartment 2 will be subject to considerable overshadowing from the built form to the north and the west and there has been no assessment of the likely shadowing impacts of the approved apartment building to the west or a comparable development. This space would likely constrain the development of the adjoining land for an apartment building or even for a smaller apartment building.
2. Having considered the submissions of the parties, I consider that modifications to the design of secluded private open space of Apartments 1 and 2 are appropriate to improve the performance of these spaces for residents, as follows:
	1. Removal of the roof to the paved alfresco area of Apartment 1;
	2. An increase in the size of the secluded private open space of Apartment 1 to 35 square metres to increase the size of the secluded private open space available to residents of this apartment; and
	3. Location of the water tank associated with Apartment 1 within the basement;
	4. An increase in the size of the secluded private open space of Apartment 2 to 18 square metres (which will necessitate the removal of a bedroom from this apartment).
3. Subject to these modifications, I consider that the secluded private open space for Apartments 1 and 2 will be adequate for the reasonable recreation and service needs of residents, for the following reasons:
	1. Mr Patrick’s landscape plan proposes a single Yellow Gum tree for the secluded private open space of Apartment 1, with ground covers including emerald arch Flax Lily, Renga Lily and Native Violet. Mr Patrick’s evidence is that there is a ‘reasonable’ space available within the secluded private open space of Apartment 1 for the Yellow Gum to grow, and that appropriate soil areas have been provided to recruit effective canopy tree planting, including areas of soil located above the basement that are sufficiently deep to carry the canopy trees selected. Based on Mr Patrick’s evidence I am satisfied that the landscaping proposed for the secluded private open space of Apartment 1 will provide an attractive and functional environment for residents;
	2. The secluded private open space of Apartment 1 will have access to sunlight up until 12 noon at the equinox according to the shadow diagrams provided with the amended plans, and removal of the roof to the paved alfresco area of Apartment 1 will allow sunlight to penetrate the paved alfresco area; and
	3. Whilst the shadow diagrams show that the west facing secluded private open space of Apartment 2 will be affected by overshadowing at the equinox, I am satisfied that on balance, the secluded private open space for Apartment 2 will provide adequate open space for the reasonable recreation and service needs of residents, having regard to the planting of this area of secluded private open space proposed in Mr Patrick’s landscape plan and the requirement to increase the size of the secluded private open space of Apartment 2 to 18 square metres (which will necessitate the removal of a bedroom from Apartment 2).
4. Other divisions of the Tribunal have found that equitable development opportunities do not automatically translate to equal amounts of development for all.[[18]](#footnote-18) The amount of development that will ultimately be possible on the adjoining sites will largely depend upon each design response prepared for that site, together with the approval of that design response from the responsible authority. The three lots to the west appear to be in the same ownership,[[19]](#footnote-19) and the lot to the east is a corner lot. The provision of additional screening, possibly in the form of a shelf or an angled screen, to further restrict downward views from the north facing balcony of the second floor north-facing apartment will assist to achieve equitable development opportunities. On this basis, I am satisfied that the proposal provides equitable development opportunities for the adjoining properties.
5. Relying on clause 16.01-1S of the Scheme (Housing supply) the Council also submits that the Apartment Guidelines seek that the development should provide 30 square metres of communal open space and there is no communal open space provided which indicates a poor level of amenity for future residents.
6. Based on the facts and circumstances of this matter, I have not been persuaded that the proposal is unacceptable because it does not provide 30 square metres of communal open space. I consider that the proposed secluded private open space provides for adequate private open space for the reasonable recreation and service needs of residents for the following reasons:
	1. It is proposed to provide each apartment with a courtyard (at ground floor level) of at least 15 square metres in size or a balcony (at the upper levels) of at least 10 square metres in size, all with convenient access from a living room. The ground floor apartments have access to soft landscaping; and
	2. In the context of the subject site and the apartment typology which is proposed, I am satisfied that subject to a requirement for the secluded private open spaces of Apartments 1 and 2 being increased to 25 square metres and 18 square metres respectively, the proposed areas of secluded private open space will provide adequate outdoor spaces for the reasonable recreation needs of residents.

### Overlooking

1. Amongst other things, the Council submits that the treatment of overlooking does not protect this development from overlooking from future development and will likely cause overlooking towards future development because the proposed screening will not protect horizontal views from the balconies of Apartments 7, 8, 10 and 11 and the kitchen window to Apartment 10 will not have any screening.
2. An additional setback of 0.5 metres of the balustrade of the north facing first and second floor balconies will create a 4.5 metre separation from the rear boundary. This will assist in limiting views with respect to a future development from the balconies on the first and second floor levels. On this basis, I consider that overlooking from these balconies towards future development has been adequately dealt with. I consider that the appropriate screening of windows in the consolidated Apartments 10 and 11 is a matter that can be dealt with by way of permit condition.

## Is the proposed landscaping response acceptable?

1. Mr Patrick prepared a landscaping plan which incorporates five canopy trees, being a Snow Gum and a Native Frangipani (with shrubs and massed ground covers) within the front setback; a Yellow Gum in the secluded private open space of Apartment 1 and two Crepe Myrtle trees within the secluded private open space of Apartments 3 and 4. It is Mr Patrick’s evidence that the canopy trees will reach heights at maturity of between approximately 6 to 10 metres.
2. With the change to increase the secluded private open space of Apartment 1 to 35 square metres, all ground floor apartments except Apartment 2 will have at least 35 square metres of secluded private open space. Taking this into account, I consider that the proposed landscaping scheme is an acceptable response to the Council’s garden city vision. I make this finding on the basis that the proposed landscaping scheme:
	1. Provides for five canopy trees, two of which can reach 10 metres height at maturity:
	2. Is consistent with the design objective in the schedule to the RGZ3 which seeks developments constructed within an open garden setting through the planting of vegetation, including five canopy trees, two of which are to be planted within the front setback;
	3. Contains elements of the garden city character which is recognised at clause 21.01-2 of the Scheme because it includes open space at ground floor level that accommodates planting of five canopy trees that can reach between 6 to 10 metres in height at maturity, which will support the garden city character sought in the Scheme;
	4. Provides sufficient private open space, to provide for vegetation and five canopy trees to be planted within the front, side and rear setbacks and secluded open space areas, consistent with what is sought at clause 22.01-3 of the Scheme;
	5. Provides for two canopy trees, shrubs and ground covers within the front setback which will soften the appearance of the built form and contribute to the public realm;
	6. Allows for planting opportunities adjacent to Centre Road by excluding car parking, turning circles and a wide driveway from the front setback; and
	7. Limits the driveway length and width and provides landscaping on both sides of the driveway and locates the driveway to preserve the street tree.

## Response to previous Tribunal decision

1. I am satisfied that the proposal has appropriately responded to the concerns identified in the previous Tribunal decision for the following reasons:
	1. Changes to the layout from what was previously proposed, including the provision of ground level secluded private open space have allowed for improved landscaping opportunities throughout the site;
	2. The change from seven, side loaded dwellings, to the apartment typology has removed the uncomfortable relationship between the hedge along the eastern boundary and the cantilevered balconies and privacy screens of the five side-loaded balconies in the previous proposal, which the Tribunal found failed to meet the objective of an ‘open garden setting’;
	3. The external amenity impacts of the previous proposal along the eastern boundary have been addressed by the removal of the east facing balconies. The setback from the eastern boundary in combination with the use of articulation and modulation between the first and second floor levels as they will present to the property to the east will create a visually acceptable built form;
	4. The response in terms of internal amenity of indoor living spaces is acceptable in light of criticisms of the previous proposal. An outlook beyond the screened balconies, or towards secluded private open space is available from the living area of all apartments, and some apartments also have another window to the living area. Apartments 10 and 11 are to be combined, allowing for additional room widths for the living area within the consolidated apartment. The windows to a number of the east and west facing bedrooms are angled, to allow for an outlook towards the north or south, whilst still limiting overlooking;
	5. The issue of inconvenient access to a garage has been addressed by the location of car parking spaces within the basement, which has allowed opportunities for planting; and
	6. There has not been a material change to:
		1. the planning scheme controls or the planning policy applicable to the land (apart from those which were introduced by Amendment VC174 to the Scheme which I have already addressed in these reasons);
		2. the circumstances of the land and its surrounds; and
		3. the interpretation of the facts or law relevant to this matter.

## Are there any other issues?

1. The location of the crossover proposed with the application was not supported by Council because it was of the view that it would likely impact the critical root zone of the existing street tree. The narrowing of the accessway has enabled the retention of the street tree, and the Council no longer pursues this issue.
2. The proposal was referred to the Head, Transport for Victoria as a result of the proposal to alter access to Centre Road. The Head, Transport for Victoria does not object to the proposal subject to conditions which have been included in the permit.

## What conditions are appropriate?

1. I have considered the draft conditions and the submissions from the parties in this regard. In addition to the changes to the plans that I have already referred to in these reasons, I have made modifications to the draft conditions including the following:
	1. The window to the walk in robe of Apartment 9 is to be deleted;
	2. The angled windows proposed are to be accurately depicted on all floor plans and elevations, including a clear depiction of the elements of the window that are transparent and the elements that are obscure glazing and materials; and
	3. The soil in the garden beds in the rear secluded private open space garden bed above the basement is to be specified on the landscape plan.

## Conclusion

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

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

# Appendix A – Permit Conditions

|  |  |
| --- | --- |
| Permit Application No | TPA/51424 |
| Land | 1419 Centre RoadCLAYTON VIC 3168  |

|  |
| --- |
| What the permit allowS |
| In accordance with the endorsed plans:* Construction of two or more dwellings on a lot;
* Create or alter access to a road in a Transport Zone 2.
 |

## Conditions

1. Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and then form part of the permit. The plans must be generally in accordance with the plans submitted to Council prepared by Bello, dated 21 July 2021 (Revision B, VCAT Issue, drawings numbers TP01 to TP17) but modified to show:
	1. The proposed vehicle crossing to be extended in width as far west on the property as practicable, with the western side of the accessway angled to be aligned with the crossover and the eastern side of the crossover to be a minimum of 3 metres from the trunk of the street tree to the satisfaction of the responsible authority.
	2. The power pole is to be relocated on the eastern side of the existing street tree, outside of the Tree Protection Zone.
	3. Apartments 10 and 11 combined into one apartment with the eastern and western boundary setbacks to comply with Standard B17 without chamfering the walls; provision of additional screening, in the form of a shelf or an angled screen, to further restrict downward views from the north facing balcony; windows to be designed according to clause 55.04-6 (Overlooking objective) and the layout to be designed according to clause 55.07-12 (Functional layout objective).
	4. A minimum of 35 square metres of ground floor secluded private open space (minimum dimension of 3 metres) provided for Apartment 1;
	5. Removal of the roof of the paved alfresco area of Apartment 1;
	6. Location of the water tank for Apartment 1 in the basement;
	7. Removal of one bedroom in Apartment 2 and an increase in the size of the secluded private open space to a minimum of 18 square metres of ground floor secluded private open space provided for Apartment 2.
	8. The balustrade of the first and second floor north facing balconies to be set back a further 0.5 metres from the northern boundary of the land to achieve a 4.5 metre setback from the northern boundary.
	9. The angled windows shown as fixed and are to be accurately depicted on all floor plans and elevations, including a clear depiction of the materials; the element of each window that is transparent and the element that is obscure glazing and the location of the window.
	10. The first floor window associated with the dining space of Apartment 5 to be designed according to clause 55.04-6 (Overlooking objective).
	11. Any windows which are shown to be openable with obscure glass are to have restricted openings to comply with Standard B22 of Clause 55.04-6.
	12. Doors to all rooms and robes.
	13. The window for the walk in robe in Apartment 9 be deleted.
	14. The maximum overall height of the development to be clearly specified on the elevations.
	15. The location of clotheslines for the ground floor apartments.
	16. A schedule of materials, finishes and colours that commits to specific materials, finishes and colours.
	17. The width of the crossover and driveway to match at the property boundary.
	18. Ramp gradients to be in accordance with the design guidelines of Clause 52.06-9.
	19. All services within the front setback of the site to be fully integrated, finished with high quality materials and minimise impact on proposed landscaping.
	20. A Landscaping Plan in accordance with Condition 3 of this Permit.
	21. Any changes required or detail provided of any varied construction measures required in accordance with the Tree Management Plan prepared in accordance with Condition 5 of this Permit.
	22. A Sustainability Management Plan in accordance with Condition 8 of this Permit.
	23. A Waste Management Plan in accordance with Condition 10 of this Permit. All to the satisfaction of the responsible authority.
2. The development as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.
3. Concurrent with the endorsement of any plans requested pursuant to Condition 1, 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. When endorsed, the plan will form part of the Permit. The Landscape Plan must be generally in accordance with the Landscape Plan for VCAT prepared by John Patrick Pty Ltd, dated August 2021 (Drawing No VCAT 01) except that the plan must be modified to show:
	1. Any changes as required by Condition 1 of this Permit as required.
	2. The soil type in the garden beds of Apartments 3 and 4 to be specified.
4. Before the occupation of the buildings allowed by this permit, the landscaping works as shown on the endorsed plans must be carried out and completed to the satisfaction of the responsible authority. Landscaping must then be maintained to the satisfaction of the responsible authority, including that any dead, diseased or damaged plants are to be replaced.
5. Concurrent with the submission of amended plans required by Condition 1 and prior to any demolition or site works, a Tree Management Plan (**TMP**) must be submitted to and approved by the responsible authority. The TMP must be prepared by a suitably qualified and experienced Arborist and must set out recommendations and requirements in relation to the management and maintenance of Tree Nos. 1, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17 and 18 (as identified in the Arborist Report submitted with the application, prepared by PSY Inv Pty Ltd dated 19 November 2020).

The TMP must be approved by the responsible authority prior to the commencement of any works, including demolition and/or levelling of the site. The TMP must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites and detail the following to the satisfaction of the responsible authority ensuring the trees to be retained remain healthy and viable during construction:

* 1. A Tree Protection Plan drawn to scale that shows:
		1. Tree protection zones and structural root zones of all trees to be retained;
		2. All tree protection fenced off areas and areas where ground protection systems will be used;
		3. The type of footings within any tree protection zones;
		4. Any services to be located within the tree protection zone and a notation stating all services will either be located outside of the tree protection zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the Project Arborist; and
		5. A notation to refer to the TMP for specific detail on what actions are required within the tree protection zones.
	2. Details of how the root system of any tree to be retained will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the Project Arborist.
	3. Detail of any management techniques required regarding the removal and relocation of the power pole.
	4. Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority; and
	5. Any remedial pruning works required to be performed on tree canopies located within subject site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur.
	6. The recommendations contained in the approved TMP must be implemented to the satisfaction of the responsible authority.
1. All buildings and works within the Tree Protection Zone and Critical Root Zone as specified in the endorsed arborist report must be supervised by a suitably qualified and experienced arborist, to the satisfaction of the responsible authority.
2. An in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the responsible authority.
3. Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainability Management Plan (**SMP**) must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the SMP submitted with the application, prepared by StaRating, except that the plan must be modified to show:
	1. Any changes required by Condition 1 of this planning permit; and
	2. A copy of the plans which form the basis of the assessment.
	3. 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.
4. Prior to the commencement of any site works (including any demolition and excavation), a Construction Management Plan (**CMP**) must be submitted and approved by the responsible authority. No works are permitted to occur until the CMP has been endorsed by the responsible authority. Once endorsed, the CMP will form part of the permit and must be implemented to the satisfaction of the responsible authority. The CMP must address the following issues:
	1. Appropriate measures to control noise, dust and water and sediment laden runoff;
	2. Appropriate measures for the prevention of silt or other pollutants from entering into the Council’s underground drainage system or road network;
	3. Appropriate measures relating to removal of hazardous or dangerous material from the site, where applicable;
	4. A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site so as to prevent material leaving the site and being deposited on Council’s road network;
	5. A program for the cleaning and maintaining surrounding road surfaces;
	6. A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves;
	7. Measures to provide for public safety and site security;
	8. A plan showing the location of parking areas for construction and subcontractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
	9. A Traffic Management Plan showing truck routes to and from the site;
	10. A swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
	11. Appropriate measures to ensure that sub-contractors/tradespersons operating on the site are aware of and adhere to the requirements of the CMP;
	12. The provision of contact details of key construction site staff; and
	13. Include a requirement that except with the prior written consent of the Responsible Authority, a requirement that demolition, excavation or construction works must only be carried out during the following hours:
		1. Monday to Friday (inclusive) – 7.00am to 6.00pm;
		2. Saturday – 9.00am to 1.00pm;
		3. Saturday – 1.00pm to 5.00pm (only activities associated with the erection of buildings that does not exceed the relevant EPA guidelines);
		4. No works are permitted on Sundays or Public Holidays.
	14. The provisions, recommendations and requirements of the endorsed CMP must be implemented and complied with by all contractors to the satisfaction of the responsible authority.
5. Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan (**WMP**) must be submitted and approved by the responsible authority. The plan must be generally in accordance with the Waste Management Plan prepared by TTM dated 11 December 2020, except that the plan must be modified to show:
	1. Any changes required by Condition 1 of this Planning Permit.

The provisions, recommendations and requirements of the endorsed WMP must be implemented and complied with to the satisfaction of the Responsible Authority.

1. No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.
2. Prior to the occupancy of the development, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the responsible authority. Once installed the screening and other measures must be maintained ongoing to the satisfaction of the responsible authority. The use of obscure film fixed to transparent glass or windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.
3. Any required fire services, electricity supply, gas and water meter boxes must be discreetly located and/or screened to compliment the development to the satisfaction of the responsible authority. Any required services must be clearly detailed on endorsed plans forming part of this permit.
4. Before the use starts or any building is occupied, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
	1. constructed to the satisfaction of the responsible authority;
	2. properly formed to such levels that they can be used in accordance with the plans;
	3. surfaced with an all-weather sealcoat to the satisfaction of the responsible authority;
	4. drained, maintained and not used for any other purpose to the satisfaction of the responsible authority;
	5. line-marked to indicate each car space and all access lanes to the satisfaction of the responsible authority.
5. Parking areas and access lanes must be kept available for these purposes at all times.
6. Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the Responsible Authority.
7. All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
8. Any works within the road reserve must ensure the footpath and nature strip are to be reinstated to Council standards.
9. 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.
10. The site must be drained to the satisfaction of the responsible authority.
11. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the responsible authority.
12. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing, or any alternate system.
13. A plan detailing the drainage works must be submitted to the Engineering Division of the Council prior to the commencement of works. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit to the satisfaction of the responsible authority.
14. The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the responsible authority.
15. Prior to the endorsement of plans, amended plans must be submitted to and approved by the Head, Transport for Victoria. The plans must be drawn to scale with dimensions and generally in accordance with the submitted plan but modified to show:
	1. The width of the crossover and driveway to match at the property boundary.
16. Prior to the occupation of the development, the new crossover must be constructed to the satisfaction of the Responsible Authority and at no cost to the Responsible Authority and the Head, Transport for Victoria.
17. Prior to the 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 the Responsible Authority and the Head, Transport for Victoria.
18. All vehicles must enter and exit the site in a forward direction at all times.
19. Once the development has started, it must be continued and completed to the satisfaction of the Responsible Authority.
20. This permit will expire if one of the following circumstances applies:
	1. The development is not started within two (2) years of the issue date of this permit.
	2. The development is not completed within four (4) years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

**– 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)
2. On this basis, Mr Ah-Kan is not a party to this matter pursuant to clause 56(6) of Schedule 1 to the *Victorian Civil and Administrative Tribunal Act 1998*. [↑](#footnote-ref-2)
3. *Immortal Pegasus Pty Ltd v Monash City Council* [2018] VCAT 225. [↑](#footnote-ref-3)
4. Which was gazetted on 20 January 2022. [↑](#footnote-ref-4)
5. Department of Environment, Land, Water and Planning, 2021. [↑](#footnote-ref-5)
6. Noting that the transitional provisions for Amendment C174 do not appear to be intended to preserve the policy framework as at 20 December 2021 for implementation when considering an application after that date that had been lodged before 20 December 2021. [↑](#footnote-ref-6)
7. At page 12 of Clause 21.01-3. [↑](#footnote-ref-7)
8. At page 15 of clause 21.01-3. [↑](#footnote-ref-8)
9. At page 4 of Clause 21.04-3. [↑](#footnote-ref-9)
10. At page 1 of Clause 22.01-1 [↑](#footnote-ref-10)
11. At page 41. [↑](#footnote-ref-11)
12. *Ormond Road (Clayton) Pty Ltd v Monash CC* [2019] VCAT 1775. [↑](#footnote-ref-12)
13. Ibid at [60]. [↑](#footnote-ref-13)
14. *K & B Reichert v City of Banyule & Ors* (Appeal No. 1996/38819); *Zumpano v Banyule City Council* [2016] VSC 420. [↑](#footnote-ref-14)
15. [2012] VCAT 1675. [↑](#footnote-ref-15)
16. Ibid at [16]. [↑](#footnote-ref-16)
17. Ibid at [18]. [↑](#footnote-ref-17)
18. For example, see *52 Park Street Pty Ltd v Port Phillip CC* [2013] VCAT 2199 at [56]. [↑](#footnote-ref-18)
19. Noting that a permit was issued at the direction of the Tribunal to develop these three lots in *Immortal Pegasus Pty Ltd v Monash City Council* [2018] VCAT 225. [↑](#footnote-ref-19)