

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11643/2021  
PERMIT APPLICATION NO.TPA/52677

### CATCHWORDS

Monash Planning Scheme; Section 77 of the *Planning and Environment Act 1987*; GRZ6; Proposal for three dwellings; Site in Monash National Employment Cluster; Housing Diversity Area; Neighbourhood character; Number of vehicle cross-overs; Internal amenity; Landscaping.

<b>APPLICANT</b>	Radium Development Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>SUBJECT LAND</b>	27 Colonel Street CLAYTON VIC 3168
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	2 May 2022
<b>DATE OF ORDER</b>	19 August 2022
<b>CITATION</b>	Radium Development Pty Ltd v Monash CC [2022] VCAT 972

### ORDER

#### Permit granted

- 1 In application P11643/2021 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/52677 a permit is granted and directed to be issued for the land at 27 Colonel Street, Clayton in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
  - Construction of two or more dwellings on a lot in a General Residential Zone – Schedule 6.

Mary-Anne Taranto  
**Member**



## APPEARANCES

For applicant

Mr Daniel Bowden, town planner of  
SongBowden

For responsible authority

Mr David De Giovanni, town planning  
consultant

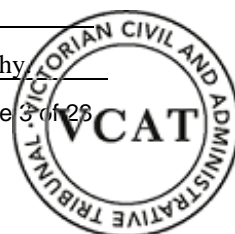


## INFORMATION

Description of proposal	Development of the site with three 2-storey dwellings. Units 1 and 3 are to have four bedrooms, a single car garage and uncovered tandem car space. Unit 2 is to have two bedrooms and a single garage. Separate vehicle access is proposed for Unit 1 while Units 2 and 3 will share a common driveway on the site's west side. Design elements include hipped roof forms. External materials and finishes primarily comprise face brick and render to ground level walls and light weight cladding and render to upper levels.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Zone and overlays	General Residential Zone – Schedule 6 ( <b>GRZ6</b> ) Design and Development Overlay – Schedule 14 ( <b>DDO14</b> ) Design and Development Overlay – Schedule 15 ( <b>DDO15</b> )
Permit requirements	Clause 32.08-6 – Construction of two or more dwellings on a lot  A permit is not required under the provisions of DDO14 and DDO15 which relate to flight paths.
Key scheme policies and provisions	Clauses 11, 15, 16, 17, 21, 22.01, 52.06, 55, 65 and 71.02
Land description	The review site ( <b>site</b> ) is a rectangular shaped 709sqm lot with a frontage of 15.24m and depth of 45.62m. The site is developed with a modest weatherboard dwelling with a pitched tiled roof. The land contains no significant vegetation, noting that three large eucalypts were removed from the land in the months before permit application was lodged with the council. <sup>1</sup>
Tribunal inspection	Unaccompanied subsequent to the hearing.

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<sup>1</sup> Some time between 29 April 2021 and 1 September 2021 based on Nearmap aerial photography



## REASONS<sup>2</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 Radium developments (the **applicant**) is seeking a review of the Monash City Council's decision to refuse a planning permit for three dwellings on the site.
- 2 The council's grounds for refusing a permit primarily relate to the proposal's response to the preferred neighbourhood character and internal amenity.
- 3 The applicant asserts that the proposal is an acceptable one in this area where considerable housing growth and change is occurring consistent with the direction of metropolitan and local planning policies.

### WHAT ARE THE KEY ISSUES?

- 4 I consider that the determinative issues in this case revolve around the proposal's response to the following:
  - the strategic directions for housing and growth in this area;
  - the preferred character, physical context and neighbouring residential amenity; and
  - levels of on-site amenity.
- 5 Assisted by my inspection, I have decided that subject to some minor design modifications, the proposal is an acceptable one. My detailed reasons follow.

### WHAT ARE THE STRATEGIC DIRECTIONS FOR HOUSING AND GROWTH?

#### Monash National Employment and Innovation Cluster

- 6 The site is located within an established residential part of Clayton, within about 300m to 400m of the Clayton Major Activity Centre, Monash Medical Centre and Children's hospitals and Clayton train station. The Monash Technology Precinct, centred on Monash University and the Australian Synchrotron are also located nearby<sup>3</sup>. The clustering of these and other education, health, commercial, research and technology based industries form part of the Monash National Employment and Innovation Cluster (**MNEIC**).
- 7 The strategic significance of the site's inclusion in the MNEIC is reflected by the applicable zone controls and policy framework.

#### Zoning

- 8 The site is within the General Residential Zone and Schedule 6 titled 'Monash National Employment and Innovation Cluster and Clayton Activity Centre' applies (**GRZ6**).

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<sup>2</sup> 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.

<sup>3</sup> Within about 2.5km.



9 Under schedule 6 there are varied clause 55 standards relevantly including those for:

- Standard B6 (Minimum street setback) asks that walls of buildings should be set back at least 4m from the front street);
- Standard B13 – (Landscaping) New development ‘should provide or retain’:
  - at least one canopy tree, plus at least one canopy tree per 5 metres of site width;
  - A mixture of vegetation including indigenous species;
  - Vegetation in the front, side and rear setbacks; and
  - Vegetation on both sides of accessways.
  - A canopy tree should reach a mature height at least equal to the maximum building height of the new development.
- Standard B17 (Side and rear setbacks) at least 4m to the rear boundary if not within 200mm of the boundary; and
- Standard B28 (Private open space) a total area of 50sqm with a secluded area of at least 35sqm and minimum dimension of 5m with convenient access from a living room.

10 Neighbourhood character objectives are specified. These are:

To facilitate housing diversity in the form of units, townhouses and apartment developments of high quality design and finish.

To provide an interface between the Clayton Activity Centre, the Monash Employment and Innovation Cluster, the housing growth area and the lower scale surrounding garden city suburban areas.

To encourage development that respects sensitive residential interfaces and minimises building mass and visual bulk in the streetscape through landscaping in the front setback and breaks and recesses in the built form.

To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.

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

11 A maximum building height of 11.5m (0.5m higher than the default requirement) and 3 storeys applies in GRZ6.

12 Decision guidelines refer to the following matters:

- whether the development provides an appropriate transition to built form on adjoining sites;
- robustness of proposed materials and finishes;



- impact of the shape and dimensions of the lot on the ability of the development to meet any requirements of this schedule;
- location and number of vehicle crossovers;
- impact of the development on nature strips and street trees; and
- location, quantity and species of vegetation provided.

### Planning scheme policies

- 13 Settlement policies for metropolitan Melbourne describe the MNEIC<sup>4</sup> as a place of state significance and a focus for investment and growth<sup>5</sup> including new housing.<sup>6</sup>
- 14 The efficient and sustainable use of resources and an integrated approach to the location of housing proximate to other existing facilities and services underscore other key policy themes including the creation of healthy neighbourhoods and the 20 minute neighbourhood concept that give people the ability to meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip from their home.<sup>7</sup>
- 15 At the broader State and metropolitan level, urban design and neighbourhood character related policies seek to create a distinctive and liveable city with quality design and amenity and which responds positively to the local context, enhances the public realm and which contributes to existing or preferred neighbourhood character.<sup>8</sup>
- 16 These State and metropolitan policies are supported by local planning scheme policies<sup>9</sup> for Monash.
- 17 In terms of housing growth, clause 21.04-3 explains that the MNEIC is an area envisaged to ‘support substantial residential growth ... to provide housing closer to where people work and study’.
- 18 In the residential development framework plan at clause 21.04-1, the review site sits within ‘Category 2’ (Accessible Area) and ‘Category 3’ (Residential Land in the MNEIC).
- 19 Other locations identified for increased housing growth and with ‘future development potential’ under council’s Residential Development policy and framework plan at clause 21.04 include its activity centres and major boulevards of Springvale Road and Princes Highway ‘to increase proximity to employment, public transport, shops and services.’<sup>10</sup>

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<sup>4</sup> And four other such clusters in metropolitan Melbourne as well as other nominated places such as Metropolitan activity centres.

<sup>5</sup> Clause 11.01-1R. See also the accompanying Melbourne 2050 spatial framework plan which is consistent with *Plan Melbourne: Metropolitan Planning Strategy 2017-2050* (DELWP 2017).

<sup>6</sup> Clause 16.01-1R.

<sup>7</sup> Clauses 11, 11.01-1R, 15, 15.01-4R.

<sup>8</sup> See in particular clauses 15.01-5S.

<sup>9</sup> See in particular clauses 21.03 and 21.04.

<sup>10</sup> Clause 21.04-3.



20 Importantly, by directing housing growth to these preferred locations, another objective is to preserve the garden city character of other areas where a lesser degree of growth is sought. That much is clear from the first objective at clause 21.04-3 which envisages that:

This will assist to preserve and enhance garden city character and special character in the balance of the municipality. [Tribunal's underlining]

21 Maintaining and enhancing the concept of Monash's 'garden city character' is a key neighbourhood character aspiration in local policies.<sup>11</sup>

22 Other key local policy themes arising from relevant objectives and strategies for residential development and housing at clause 21.04-3 include:

- the provision of a variety of housing types and sizes that will accommodate a diversity of future housing needs and preferences that complement and enhance the garden city character of the city.
- high standards in architecture, design and landscaping;
- encouragement for vegetation retention and provision on development sites;
- environmentally sustainable development;
- high standards of internal amenity including 'access to sunlight, high quality private and public open space, canopy tree cover, ... and effective traffic management and parking'.

23 Application of the Residential Development and Character Policy at clause 22.01 is identified amongst other local policies and considerations as a means of implementing strategic directions to improve the standard and quality of the design and construction of new developments.

24 Development is to be consistent with the preferred character identified in statements for different areas throughout Monash under policy at clause 22.01.

25 A long list of policies offer design guidance that apply across the municipality at clause 22.01-3 under various headings that include street setbacks, side and rear setbacks, landscaping and private open space. Decision guidelines are also specified.<sup>12</sup> I have taken these into account but do not recite them here.

26 The site (indicated with the red dot in the image below) is within the 'Monash National Employment Cluster and Clayton Activity Centre – Housing Diversity Area'.

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<sup>11</sup> See for example clauses 21.01-1 and 21.01-3.

<sup>12</sup> Clause 22.01-5.



Source: Council submission – Figure 6 (from clause 22.01 of Monash Planning Scheme)

27 The statement of preferred character anticipates ‘major redevelopment, as one of the key areas for employment growth’ as well as ‘growth and more diverse housing needs’. A transition between this area and surrounding garden city suburbs is called for but, importantly, this is not an outcome relevant in the circumstances because the site is not at the interface between these two areas as is evident from the above image.

28 The statement of preferred character goes on to say that:

New housing will generally comprise multi dwelling developments such as units and, where appropriate, low rise apartments. Front and rear setbacks will be less than those preferred in the garden city areas, however will still provide the opportunity for landscaping. Landscaping and open space within developments will remain an important feature for this character area. Canopy trees within developments and separation between buildings will provide visual and environmental amenity for occupants and the residents of existing dwellings. New developments will be designed and constructed to a high standard, ensuring they provide a positive architectural impact. [Tribunal’s underlining]

### WHAT IS THE PHYSICAL CONTEXT?

- 29 The review site is a short distance from the eastern termination of Madeleine Street.
- 30 The site has abutments with three residential properties, all of which contain original housing that is single storey in scale.
- 31 The review site and its more immediate streetscape context is shown in the first three images below extracted from the council’s submission.





- 32 The backyard context looking north from the review site is depicted in the last photograph provided by the applicant.



Rear yard, looking north.

- 33 I provide further details of the physical context later in my reasons.

## IS THIS AN ACCEPTABLE RESPONSE FOR THIS CONTEXT?

### Overview of contentions

- 34 The council acknowledges that this is an area in which housing growth and change is expected. However, it says the proposal's response in neighbourhood character terms is not acceptable in the streetscape and in relation to its back yard setting by way of visual bulk.
- 35 While also acknowledging that the front setback of Unit 1 numerically meets the varied Standard B6 which asks for a minimum setback of 4m, the council otherwise submits the proposal would not meet the objectives for neighbourhood character in the NRZ6 due to a combination of factors. These include the amount of space between the proposed dwellings, and in relation to Unit 1, the degree of recession to the upper level footprint relative to the ground level which is said to be inadequate and would be visually bulky taking into account neighbouring front setbacks of dwellings.
- 36 Other elements of concern to the council in the streetscape are the proposed provision of two driveways and cross-overs, the presence of Unit 1's porch and bicycle parking area, pathways and other ancillary infrastructure elements such as a water meter and letter box structure which are said to unacceptably limit an appropriate landscaping response in the front setback.
- 37 The council also takes issue with the removal of the three large canopy trees shortly before lodgement of the permit application. It submits that at least one of these trees in the front yard may have been a suitable candidate for retention and that the proposed replacement landscaping is inadequate.

- 38 Although a similarly configured and designed development under construction was permitted by the council at 47 Thompson Street, the council further asserts that each application should be assessed on its merits.
- 39 The applicant submits that the design achieves an acceptable outcome for this strategic context where there is support for higher building forms of up to 11.5m and 3 storeys. Within this strategic context where larger and more intense housing forms are emerging in this area and will continue to do so over time, it is said that proposals like this one are acceptable and ‘at the lower end’ of what is reasonably expected if housing growth aspirations are to be met. The proposal’s high level of compliance with clause 55 standards for setbacks from the front, side and rear boundaries, site coverage and cross-overs were factors that are said to weigh in favour of a permit for this proposal.
- 40 In terms of landscaping, the applicant relies on the landscape plan circulated before the hearing to demonstrate that planting, including the provision of five canopy trees can be accommodated to meet the varied landscaping standard under GRZ6.

## **Tribunal’s findings**

### Strategic context considerations

- 41 I agree with the council’s general submissions that because this is an area earmarked for growth and change, that this does not equate to a situation of ‘anything goes’ in either character or amenity terms for existing and future residents. In principle, the features of the surrounding physical and strategic contexts must still be responded to in an acceptable way with each application assessed on its own merits.
- 42 I also agree that redevelopment of 29 Colonel Street is more likely to occur before 25 Colonel Street taking into account the present condition and form of these respective dwellings.
- 43 However, this is a case where I find that the strategic directions for housing and growth are to be given greater weight than those for neighbourhood character.
- 44 It is patently clear from the photographs tabled during the hearing and from my inspection of the site and surrounds that this is an area that is undergoing considerable change. While original housing stock is relatively modest in size and primarily single storey in scale, it is inevitable that its replacement with more intense forms of housing, with more compact front setbacks and scaling up to two and three storey forms, will bring about a new and different character to that which exists.
- 45 That process has commenced, with numerous examples of more intense housing forms nearby. Examples in the more immediate context include the attached form of four dwellings diagonally opposite (at 75A, 75B and 75C Madeleine Road shown in the image below and 32 Colonel Street), the six



double storey dwellings at 21-23 Colonel Street and the three double storey dwellings at 36 Thompson Street (to the rear).



Source: Google street view – Image captured January 2019 showing 75A, 75B and 75C Madeleine Road on the left.

- 46 Four three storey attached dwellings in Madeleine Road at 31 Colonel Street which terminate eastward views from this western leg of Colonel Street are shown below (extracted from the applicant's photographs).



31 Colonel Street, Clayton.

- 47 I further find that this expected process of intensification and change must temper expectations about the degree to which the council's garden city character aspirations will be met. In this location, built form is expected to be complemented by an appropriate landscape setting but not of the kind

anticipated in other areas earmarked for a lesser level of change in Monash, particularly in the streetscape setting.

- 48 By directing growth to the MNEIC, activity centres and two designated main road corridors, there is a strategic intention that this will assist in preserving and enhancing the garden city character and other special characteristics identified in the balance of the municipality.
- 49 This is implicit on my reading of the policy framework and explicitly envisaged by the first objective at clause 21.04-3. The variation to the front setback standard B6 in the GRZ6 is also, in my view, illustrative of this intended outcome in the streetscape setting.
- 50 Further, while the preferred character statement expects that landscaping and open space within developments will remain an important feature, the provision of canopy trees, space between buildings and landscaping along both sides of driveways is directed towards ‘visual and environmental amenity for occupants and residents of existing dwellings’ rather than the streetscape. The emphasis is on backyard and internal amenity and character. This stands in contrast to the aspirations expressed in ‘garden city areas’. On my reading, the advancement of council’s ‘garden city’ concept in these other areas is directed towards the streetscape as well as the backyard character context and broader amenity benefits.
- 51 Moreover, application of the preferred character statement and the neighbourhood character objectives together with other local policies must also be read in the context of this site’s location that is some distance from ‘garden city suburban’ areas. While a transition is expected in areas at the interface between the MNEIC and garden city suburban areas, this is not one such location.
- 52 In the short term at least, a more varied character, rather than one of uniformity and consistency is therefore likely and is to be anticipated. This will change over time to become one where greater intensity of built form prevails and where levels of landscaping, while present and still important, is less than that which is preferred for garden city areas, particularly in the streetscape context.
- 53 It is against this backdrop that I have assessed this proposal.

#### Streetscape interface

- 54 In relation to the streetscape response, I find that the proposed front setback at ground and first floor levels is broadly acceptable. While Unit 1 will sit forward of both neighbouring dwellings, I find that the built form response adopts acceptable levels of articulation and is sited to respect the siting of both neighbouring dwellings. Larger setbacks of 5.5m are provided on the east side to Unit 1’s garage. On the west side, the proposed driveway and neighbouring double garage at 25 Colonel Street provides an acceptable



degree of separation with the shallowest front setbacks proposed central to the site.

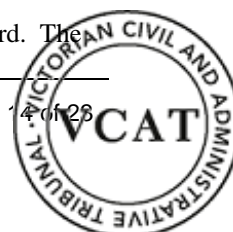
- 55 The general form, mass, styling and presentation of the dwellings is also acceptable for this evolving character context.
- 56 I am not troubled by the proposed provision of two cross-overs and driveways. I firstly observe that unlike the preferred character statements for the ‘garden city suburbs’ southern and northern areas which predominate throughout Monash, the preferred character for this housing diversity area is silent on vehicle cross-overs. In any event, the proposed crossovers and driveways are sited and designed to allow landscaping on both sides, are sited to enable one car space kerbside, are clear of a street tree and would achieve an acceptable outcome in neighbourhood character terms. They meet the numeric requirements of standard B14<sup>13</sup> and the corresponding objective.

#### Interface with residential neighbours

- 57 In this particular strategic context and having considered the physical attributes of the site and its surrounds, I am not persuaded that the proposal would give rise to unacceptable visual impacts to any neighbouring property.
- 58 In making these findings I have considered a number of factors in addition to the design response and landscaping opportunities throughout the site including its role in softening proposed built form. These include the location of existing habitable room windows relative to proposed built form including proposed walls on boundaries, lot orientation, existing and proposed driveway locations, the relationship and amount of separation between existing and proposed buildings, the presence of the existing outbuilding and screening vegetation in the case of 29 Colonel Street and the separation between the swimming pool in this neighbouring backyard relative to the review site. While the amount of space between the upper level footprint of the dwellings is not substantial, I find that the spacing proposed is acceptable given the proposed proportions of secluded private open space (SPOS) and ground and upper level setbacks of the proposed dwellings relative to both side neighbours and oblique nature of primary views to the review site from the back yard context of 25 and 29 Colonel Street.
- 59 At the rear, at the interface with 38 Thompson Street, the level of change will be most appreciable but acceptable for this strategic context. Minimum ground level setbacks (4m) and slightly larger upper level setbacks that range from 4.2m to 5m at this interface are proposed. All comply with the varied numeric requirements of standard B17 in the GRZ6, and the north elevation will present with an acceptable level of articulation.
- 60 I further find that subject to permit conditions proposed by the council, the proposal’s impacts on neighbouring vegetation, notably the (Tree Protection

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<sup>13</sup> Up to 6.4m of site frontage (40%) would apply under the numeric requirements of this standard. The proposed combined width of the driveways is 6m.



Zones) TPZs of trees in the SPOS of 29 Colonel Street can be acceptably managed.

### Vegetation removal and landscaping

- 61 The removal of vegetation shortly before the lodgement of the permit application is not a practice I endorse even when no planning permissions to do so is required. There is consistent planning scheme policy encouragement for the retention of existing vegetation. However, the issue is a vexed one, particularly in the absence of any information about the health and condition of these trees and their TPZs in determining whether a development advantage has sought to be obtained in the context of decision guidelines under clause 55.03-8.
- 62 I cannot therefore say with any certainty whether the trees were removed to gain a development advantage. It remains however that I must still assess the acceptability of the proposed landscaping response.
- 63 On the whole, I find that the proposed landscape response is broadly acceptable in terms of its contribution to the preferred character and in relation to residential amenity. In terms of canopy tree provision, the landscaping plan indicates that the varied standard for landscaping (standard B13) will be met. A total of five trees with a height greater than the overall building height (7.65m) are proposed – three trees with a mature height of 9m and two with an 8m mature height. One of these trees is provided in each area of SPOS and one in the front set back area.
- 64 In relation to landscaping opportunities throughout the site more broadly, I find that this too is mostly acceptable with good areas for planting throughout the driveway space. There are however some plan modifications that I will require.
- 65 Within the front setback, I agree with the council’s concerns about the siting of some elements in this space. More particularly, I find that the design of the porch element would have an intrusive visual impact while the pedestrian path to Unit 1’s entry and bike racks unreasonably constrain landscaping opportunities. I find that the following modifications to the plans are necessary to achieve an acceptable landscaping outcome:
- Deletion of the wing wall on the west side of the porch. The canopy roof element is to be retained and may either be designed as a cantilevered element or supported with simple posts.
  - Deletion of the bike rail.
  - Deletion of the pedestrian path between Unit 1’s front porch and driveway and its replacement with suitably spaced stepping pavers.
- 66 I also agree with the council’s concerns about the relationship of the pedestrian stepping pavers for Unit 3’s entry proximate to Unit 2’s west facing dining room window in visual and acoustic privacy terms. A related



issue is the visibility of Unit 3's entry given its alignment relative to Unit 2's footprint.

- 67 To achieve an acceptable privacy outcome for Unit 2 and legibility and address for Unit 3, I will require the following plan modifications:
- Deletion of the solid wing wall element on the west side of Unit 3's porch (roof over porch is to remain for shelter).
  - Deletion of the stepping pavers depicted on the design plans described as TP03 so as to achieve consistency with the layout shown on the landscape plan.
  - Planting shown on the landscaping plan on the west side of Unit 2's dining room window is to specify shrub species capable of achieving a mature height of at least 2m.

## **WOULD ACCEPTABLE LEVELS OF INTERNAL AMENITY BE PROVIDED?**

### **Overview of contentions**

- 68 In addition to the concerns raised by the council about the entry and access arrangements to Unit 3 and landscaping opportunities that I have addressed above, the council submits that the proposed layout would not provide acceptable levels of internal amenity for future occupants.
- 69 More particularly, it raises concerns with the daylight and outlook from unit 2's kitchen window to the southern and blank wall of Unit 3, and the 4m minimum dimension of Unit 3's SPOS which does not meet the varied 5m requirement under standard B28. Concerns are also expressed about the volume of storage in Unit 2's garage which is said to have proportions less than the 6 cubic metres required to satisfy standard B30. The SPOS of Units 2 and 3 are also said to be poorly resolved and offer poor amenity due to its service related features.
- 70 The provision of a tandem car space for Unit 3 proximate to Unit 2's front entry is said to potentially give rise to conflicts between neighbours. Concerns are also raised about the level of surveillance from ground level windows around Unit 3's entry within the internal streetscape.
- 71 The applicant submits that these are relatively minor matters and that while the dimensions of Unit 3's SPOS is less than the varied standard, the overall provision is acceptable.

### **Tribunal's findings**

- 72 I am not concerned about the 1m separation and outlook between Unit 2's kitchen window towards the blank wall on the south side of Unit 3. I say this given the nature of this room which is not a primary living area and its inclusion as part of the main open plan living and dining area which has the benefit of daylight, primary views and a more distant outlook eastwards towards this dwelling's main area of SPOS. I also expect that given the



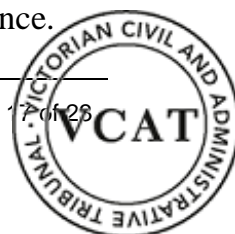


kitchen layout, any window in this location above a sink and stove, any window would have a high sill height. To the extent that some views outwards will occur, creeper planting is proposed on the south wall opposite.

- 73 In terms of the 4m minimum dimension of Unit 3's SPOS, the total area of SPOS is 74sqm. Of this, more than 64sqm has a minimum dimension ranging from 4m to 4.4m with convenient access from a living area. Given the total amount of SPOS which is 14sqm greater than the minimum specified in the standard and its good northern orientation, I consider the degree to which the minimum dimension departs from the varied standard B28 is acceptable. I find that this area of SPOS has features that will provide adequate space for the reasonable recreation and service needs of residents. I therefore conclude that the objective for private open space at clause 55.05-4 is met.
- 74 I agree with the council's observations that the amount of storage in Unit 2's garage is less than 6 cubic metres given its depth of around 0.4m and length of 3.5m. I will require some minor changes to the layout of Unit 2's SPOS including relocation of the clothesline to the east side of the living room wall and provision of supplementary storage on the south side of Unit 3's wall to achieve a total of 6 cubic metres for this dwelling.
- 75 With the modifications to the entry and pedestrian arrangements for Unit 3 that I have previously described, I am satisfied that the resultant levels of surveillance and pedestrian movements around Units 2 and 3 will be acceptable.

#### **WHAT CONDITIONS ARE APPROPRIATE?**

- 76 Conditions were discussed at the hearing and any changes to the permit conditions contained in Appendix A of this order reflect those discussions plus further consideration by the Tribunal.
- 77 I have also refined the wording of some conditions for grammatical reasons, consistency and the like, without changing their intent. I have also adopted the Tribunal's standard wording for the permit expiry.
- 78 A number of other matters about permit conditions were raised at the hearing. With respect to those matters, other than those already addressed above, I summarise my conclusions as follows:
- I will require the west facing habitable room windows of Unit 1's retreat and bedroom 2 and Unit 2's bedroom 1 and bedroom 2 to be screened using external louvres rather than fixed obscure glazing in accordance with the requirements set out in standard B22 at clause 55.04-6.
  - In light of design quality concerns raised by the council, I will include a condition requiring more specific details about the external colours, materials and finishes proposed including the name and type of materials for garage doors and vertical cladding to upper level walls. Such materials and finishes are to be of a high quality and low maintenance.



- I will include reference to the landscaping plan circulated before the hearing in condition 3.

## **CONCLUSION**

79 For the reasons given above, the decision of the responsible authority is set aside.

80 A permit is granted subject to conditions.

Mary-Anne Taranto  
**Member**



## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	TPA/52677
<b>LAND</b>	27 Colonel Street, Clayton

### WHAT THE PERMIT ALLOWS

Construction of two or more dwellings on a lot in a General Residential Zone – Schedule 6, in accordance with the endorsed plans.

## CONDITIONS

### Amended Plans

- 1 Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of 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 submitted plans prepared by Bello Design Group dated 4 August 2021 comprising sheets TP01 to TP08 inclusive, but modified to show:
  - (a) Deletion of the wing wall on the west side of Unit 1’s front porch. The canopy roof element is to be retained and may either be designed as a cantilevered element or supported with simple posts.
  - (b) Deletion of the bike rail in front of Unit 1’s entry in favour of additional soft landscaping.
  - (c) Deletion of the pedestrian path between Unit 1’s front porch and driveway and its replacement with suitably spaced stepping pavers.
  - (d) Deletion of the solid wing wall element on the west side of Unit 3’s porch (roof over porch is to remain for shelter).
  - (e) Deletion of the stepping pavers depicted on the design plans described as TP03 so as to achieve consistency with the layout shown on the landscape plan referred to in condition 3 of this permit.
  - (f) Planting shown on the landscaping plan on the west side of Unit 2’s dining room window is to specify shrub species capable of achieving a mature height of at least 2m.
  - (g) Changes to the layout of Unit 2’s secluded private open space area including relocation of the clothesline to the east side of the living room wall and provision of supplementary storage on the south side of Unit 3’s wall to achieve a total of 6 cubic metres for this dwelling (calculations of each storage area are to be provided).



- (h) The following west facing habitable room windows are to be screened using external louvres rather than fixed obscure glazing in accordance with the requirements set out in standard B22 at clause 55.04-6:
  - i Unit 1's retreat and bedroom 2; and
  - ii Unit 2's bedroom 1 and bedroom 2.
- (i) The schedule of external materials and finishes modified to provide more specific details about the external colours, materials and finishes that are proposed including the name and type of materials for garage doors and vertical cladding to upper level walls. Such materials are to be of a high quality and low maintenance, to the satisfaction of the Responsible Authority.
- (j) Any changes required by the SDA report referred to in Condition 7 of this permit.
- (k) An amended Landscape Plan in accordance with Condition 3 of this Permit.

**Layout not to be altered**

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

**Landscape Plan**

- 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. The Landscape Plan must be generally in accordance with the landscape plan prepared by John Patrick Landscape Architects dated 22 April 2022 Dwg No. L-VCAT01 but modified to show:
  - (a) the design and landscaping modifications referred to in conditions 1(a), (b), (c), (d), (f) and (g) of this permit;
  - (b) a survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan;
  - (c) provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
  - (d) planting to soften the appearance of hard surface areas such as driveways and other paved areas;
  - (e) a planting schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities;



- (f) the location and details of all fencing;
- (g) the location of any retaining walls associated with the landscape treatment of the site;
- (h) details of all proposed surface finishes including pathways, accessways, patio or decked areas;

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

### **Tree Protection**

- 4 Before any development (including demolition) starts on the land, a tree protection fence must be erected around all trees that are to be retained, or are located within or adjacent to any works area (including trees on adjacent land). The tree protection fence must remain in place until all construction is completed on the land, except with the prior written consent of the Responsible Authority.
- 5 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the demolition, excavation and construction period of the development hereby permitted without the prior written consent of the Responsible Authority.

### **Landscaping Prior to Occupation**

- 6 Before the occupation of any 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 thereafter maintained to the satisfaction of the Responsible Authority.

### **Sustainable Design Assessment (SDA)**

- 7 Concurrent with the endorsement of any plans, a Sustainable Design Assessment (SDA) must be submitted to and approved by the Responsible Authority. Upon approval the SDA will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SDA to the satisfaction of the Responsible Authority. The report must include, but is not limited to, the following:
  - (a) Demonstration of how ‘best practice’ sustainability measures have been addressed, having regard to the relevant aspects of Clause 21.13 of the Monash Planning Scheme.
  - (b) Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
  - (c) Document the means by which the appropriate target or performance is to be achieved.



- (d) Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
  - (e) Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.
- 8 All works must be undertaken in accordance with the endorsed Sustainability Design Assessment to the satisfaction of the Responsible Authority. No alterations to the endorsed Sustainable Design Assessment may occur without written consent of the Responsible Authority and (to the extent material and necessary) any relevant flow-on changes to the design response must be also incorporated into the endorsed architectural plans.

### **Drainage**

- 9 The site must be drained to the satisfaction of the Responsible Authority.
- 10 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.
- 11 The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve. The internal drainage system may include either:
- (a) a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
  - (b) shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
  - (c) another Council approved equivalent.
- 12 A plan detailing the drainage works must be submitted to the Council (Engineering Division) prior to the commencement of works for approval. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.
- 13 Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge.
- 14 The nominated point of stormwater connection for the site is to the south-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the kerb and channel in the nature-strip via a Council approved kerb adaptor to be constructed to Council standards, to the satisfaction of the Responsible Authority.
- 15 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.
- 16 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.



## **Vehicle Crossovers**

- 17 All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, nature-strip, kerb and channel to the satisfaction of the Responsible Authority.
- 18 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
- 19 All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
- 20 All vehicle crossings within 1.50 metres of an adjoining crossing shall be converted to a double crossing in accordance with Council standards.
- 21 Any works within the road reserve must ensure the footpath and nature-strip are to be reinstated to Council standards.
- 22 Engineering permits must be obtained for new or altered or removal of vehicle crossings, works within the Road Reserve and for connections to Councils drains / Council pits / Kerb & Channel and these works are to be inspected by Council.
- 23 The development must be provided with a corner splay or area at least 50% clear of visual obstruction (or with a height of less than 1.2m) extending at least 2.0 metres long x 2.5 metres deep ( within the property) on both sides of each vehicle crossing to provide a clear view of pedestrian on the footpath of the frontage road.

## **Urban Design**

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

## **Satisfactory Continuation and Completion**

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

## **Permit Expiry**

- 26 This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
  - (a) The development is not started within two years of the issue date of this permit.
  - (b) The development is not completed within four 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 –

