 VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P750/2021  Permit Application no.TPA/51690 |

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| **Applicant** | Quan Long Tran |

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| **Responsible Authority** | Monash City Council |

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| SUBJECT LAND | 4 Faulkiner Street  CLAYTON |

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| DATE OF ORDER | 13 October 2021 |

# Order

1. The hearing scheduled at **2.15pm on 18 October 2021** is vacated. No attendance is required.
2. No order as to costs.
3. 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: | Xpress Building Design |
| * Drawing numbers: | Drawings A01.1 – A01.15 |
| * Dated: | 30/09/2021 |

* Landscape Plan prepared by: Zenith Concepts Landscape Design
* Drawing number: Revision A
* Dated: August 2021.
* SDA prepared by: Xpress Building Design, Project No. 8882702

1. In application P750/2021 the decision of the responsible authority is set aside.
2. In planning permit application TPA/51690 a permit is granted and directed to be issued for the land at 4 Faulkiner Street Clayton in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Construction of three, two storey dwellings

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| K Birtwistle  **Member** |  |  |

# remarks

1. This order is made at the request of the parties and with their consent.
2. The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:

* the responsible authority is of the opinion that the permit is appropriate having regard to the matters it is required to consider under section 60 of the *Planning and Environment Act 1987* (**Act**), including the balanced application of the strategies and policies of the Monash Planning Scheme (**Planning Scheme**) and is otherwise in conformity with the provisions of the Planning Scheme and the Act;
* the proposed orders will not result in any change to the proposed development which would materially affect any person other than the parties to the proceeding.

1. Based on the information available to the Tribunal, I consider it is appropriate to give effect to the settlement reached by the parties pursuant to section 93(1) of the *Victorian Civil and Administrative Tribunal Act 1998*.

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| K Birtwistle  **Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No | TPA/51690 |
| Land | 4 Faulkiner Street  CLAYTON |

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| What the permit allowS |
| In accordance with the endorsed plans:   * Construction of three, two storey dwellings |

## Conditions

1. Before the development starts, amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans prepared by Xpress Building Design, Job No. 8882702, Drawings A01.1 – A01.15, Dated 27/08/2021, but modified to show:
   1. The following changes depicted in the development plans prepared by Xpress Building Design, Job No. 8882702, Drawings A01.1 – A01.15, dated 30/09/2021: General
      1. Relocation of the group meter to a position behind the front wall of the entry to Unit 1.
      2. A notation on the plans along the front property boundary that there is ‘No fencing’.
      3. A landscape bed, with a minimum width of 300mm, inside the western boundary opposite the garages of Units 1 and 2 so as to create a continuous landscaping area in this location. Plantings in this location are to have a maximum height of 150mm only where required to accommodate vehicle swept paths in accordance with the requirements of Condition 1(c).
      4. Provision of a concrete driveway pattern generally opposite the garage of Unit 1 and 2 commencing at the turning radius of the accessway/s.
      5. A notation that the driveway is to be graded into ENVISS Pits (or similar).
      6. A clear legible diagram regarding construction of the crossover including its source along with a notation that the vehicle crossover is to be constructed to the satisfaction of the Responsible Authority.
      7. The provision of temporary rectangular wire fencing in accordance with AS 4790- 2009 Protection of Trees on Development Sites, around the tree protection zone of the Council street tree at the front of the site prior to the commencement of works and retained until completion of the development.

Unit 1

* + 1. Reduction in the porch landing adjacent to the living room wall to increase landscaping opportunities. The reduced area is to be open to sky and be unroofed or be an open structure.
    2. Replacement of the timber paling fence with a vertical timber post fence with a maximum transparency of 25% opposite the private secluded open space of Unit 1.
    3. Reduction in the width of Bedroom 1 (northern wall) by 200mm and the reduction in the width of the garage by 150mm (to 3.5m wide) and the consequential increase in secluded private open space.

Unit 2

* + 1. Reduction in the depth of the living room (northern wall) by 750mm and the consequential increase in secluded private open space.
    2. The northern wall of the first floor ensuite setback at least 4 metres from the first floor wall of Unit 1.
    3. A full-size window to be provided to the northern wall of Bedroom 2 with an overlooking diagram to demonstrate compliance with Standard B22 of the Monash Planning Scheme. The west facing window of bedroom 2 modified to a highlight (1.7m sill height) window.

Unit 3

* + 1. Increase the setback of the western wall of bedroom 2 from the western boundary to 3.02 metres.
    2. Provision of a 300mm high free standing trellis with a maximum 25% transparency above the existing eastern boundary fence opposite Unit 3.
    3. Increase the setback of the eastern wall of the living room from the eastern boundary to 1.5 metres.
  1. Inclusion of additional vertical cladding (to approximately 50%) at the upper level east and west facing elevations of Unit 2.
  2. Swept path diagrams prepared by a qualified Traffic Engineer with any traffic engineering recommendations for landscape design opposite garages 1 and 2.
  3. Updated Landscape Plan in accordance with Condition 3 of the Planning Permit.
  4. An updated Sustainability Design Assessment in accordance with Condition 4 and any changes arising to the layout identified.
  5. An updated Arboricultural Report reflecting the development plans (including any measures required to protect what appears to be a tree in the south-west corner of 2/4 Faulkiner Street).
  6. Any specific tree protection measure arising from Condition 7.

1. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
2. Concurrent with the endorsement of plans pursuant to Condition 1, a landscape plan to the satisfaction of the Responsible Authority prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority prior to the commencement of any works. The plans must be generally in accordance with the Landscape Plan prepared by Zenith Concepts Landscape Design, Revision A, dated August 2021 but be amended to show:
   1. Any changes to the landscape design as a result of Condition 1 of this Planning Permit.
   2. Alternative faster growing trees (preferably native trees) as an alternative to the Crepe Myrtles in the front setback area.
   3. The provision of canopy trees (3) with non-invasive root systems in the rear private secluded open space of Unit 3 that will grow to the height of that dwelling.
   4. All trees with a minimum height of 1.5 metres at the time of planting.

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

1. Concurrent with the endorsement of plans pursuant to Condition 1, a Sustainability Design Assessment must be submitted and approved by the Responsible Authority. The plan/report must be generally in accordance with the Sustainability Design Assessment prepared by Xpress Building Design, Project No. 8882702 but amended to show any relevant changes as a result of Condition 1 of this Planning Permit.

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

**Landscaping Before Commencement of Use**

1. 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.
2. The landscaping is to be continued, completed and maintained to the satisfaction of the Responsible Authority.

**Tree protection during construction**

1. Concurrent with the endorsement of plans pursuant to Condition 1 updated arboricultural report to be provided referring also to what appears to be a tree in the south-west corner of 2/6 Faulkiner Street. Any tree protection measures other than tree protection fencing are to be identified. The report needs to also detail any trimming of trees on adjoining land ensuring no impacts to the longevity of the vegetation occurs. If arboricultural supervision is required this should be clearly identified.
2. Before any development (including demolition) starts on the land, a tree protection fence must be erected around the trees on adjoining land including the street tree in the nature strip around the "Tree Protection Zone" of protected trees as detailed in the endorsed arborist report. The fence must be erected as specified in the endorsed arborist report and be in accordance with AS 4970-2009 Protection of trees on development sites.
3. 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. Contractors to be advised of trees to be retained
4. The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of trees to be retained as detailed in the endorsed arborist report and are advised of any obligations in relation to the protection of those trees.

**No Material near Trees**

1. 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. No Vehicle near Trees
2. No vehicle access or parking within the Tree Protection Zone of any tree to be protected as identified in the endorsed arboricultural report.

**Drainage Engineering**

1. A 6 metre wide easement needs to be created at the time of subdivision along the southern boundary to protect Council’s existing 750 mm drain.
2. 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.
3. 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 100 mm pipe to the 750 mm Council drain in the rear easement via a Council approved saddle adaptor to be constructed to Council standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately. Road Infrastructure
4. Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
5. The vehicle crossing is to be constructed to align with the proposed driveway.
6. Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council drains and these works are to be inspected by Council's Engineering Department. At the time of issue, a refundable security deposit of $2,000 (subject to change) is to be paid prior to the drainage works commencing.
7. One copy of the plans for the drainage and civil works must be submitted to and approved by the Engineering Department prior to the commencement of works. The plans are to show sufficient information to determine that the drainage works will meet all drainage conditions of the permit. Time for Starting and Completion
8. In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
   1. The development is not started before 2 years from the date of issue.
   2. The development is not completed before 4 years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or

* within six (6) months afterwards if the development has not commenced; or
* within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

**– End of conditions –**