

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11773/2021
PERMIT APPLICATION NO.TPA/51774

APPLICANTS	Lynne Bowlen, Daniel Ker & Queenie Chan
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENT	Chiam Developments Pty Ltd
SUBJECT LAND	63-65 Madeleine Road, CLAYTON VIC 3168
HEARING TYPE	Hearing
DATE OF HEARING	21 July 2022
DATE OF ORDER	25 July 2022

ORDER

Permit granted

- 1 The decision of the responsible authority is varied.
- 2 In planning permit application TPA/51774 a permit is granted and directed to be issued for the land at 63-65 Madeleine Road, CLAYTON VIC 3168 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Development of the land for two or more dwellings (eight townhouses)

Dalia Cook
Member

APPEARANCES

For applicants	Adam Parker, Town planner, Town Planning Group Pty Ltd
For responsible authority	Sally Moser, Town planner
For respondent	Tim Retrot, Town planner, Prourban He called Andrew Zivanovic, Traffic Engineer, Three Ten Eight to give expert evidence



INFORMATION

Description of proposal	Development of 8 double storey townhouses, each with two car parking spaces
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone (Schedule 6) Design and Development Overlay (Schedule 14)
Permit requirements	Clause 32.08-6
Key scheme policies and provisions	Clauses 11, 15, 16, 21, 22.01, 52.06 and 55 in addition to the matters in Clause 65
Land description	<p>The land comprises two vacant lots which form a corner site in an established residential enclave close to the Monash Medical Precinct and Clayton activity centre. The land has an area of approximately 1,441 square metres. Both the immediate and broader area are undergoing renewal and change.</p> <p>The land forms part of the designated National Employment and Innovation Cluster.</p>
Tribunal inspection	I inspected the subject land and surrounds before the hearing.



REASONS

- 1 I delivered a decision orally at the conclusion of the hearing, supporting Council's decision to grant a permit subject to conditions that were refined during the hearing process.
- 2 The recording constitutes the record of this decision, confirming that the development proposal is appropriate having regard to the physical and policy context of the site.

Dalia Cook
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/51774
LAND	63-65 Madeleine Road, CLAYTON VIC 3168

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Development of the land for two or more dwellings (eight townhouses)

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 plans submitted to Council prepared by Jesse Ant Architects dated 11 May 2021 identified as plan set TP00 – TP18, Project Number 20064, but modified to show:
 - (a) A notation the southernmost street tree (*Crateagus*) in the Madeleine nature strip removed and replaced by Council at the cost of the applicant prior to commencement of the development including any site works.
 - (b) The crossover to the common driveway off Thompson Street shifted 0.5 metres east to create a 3 metre setback from the base of Melia street tree located west along the Thompson Street naturestrip. The common driveway is to line up with the crossover and curve within the site resulting in an increase in landscaping on the west side and a reduction of landscaping on the east side of the driveway.
 - (c) A notation there be no-excavation within 3 metres in the base of the Melia street tree located west along the Thompson Street naturestrip. The notation is to further specify that any works within 3.6 metres of the base of the tree is to be supervised by the project arborist and utilise hand excavation with any roots over 40mm being cleanly cut with photos taken of same submitted to Council prior to occupation of the buildings.
 - (d) All north and east facing habitable room windows at 1/67 Madeleine Road and the solar panels at 2/67 Madeleine Road.



- (e) The Dwelling 1 decorative treatment above the ground floor window on the north side continuing around/above the ground floor face brick wall to the Thompson Street presentation with decorative brick banding also applied to the wall.
- (f) The balconies of Dwellings 3 & 4 to Madeleine Avenue constructed in clear glass (removing the masonry section above the garages) with a minimum 10 square metre area and minimum dimension of 2 metres. The setbacks of the balconies are not to be reduced to the street or abutting property to the east.
- (g) The south facing upper level stairwell window abutting the living/dining area of Dwelling 4, changed to a highlight window or alternatively be obscure glazed.
- (h) Compliance with Standard B22 (Overlooking) of Clause 55.04-6 between the Dwelling 4 balcony and the habitable room windows of 1/67 Madeleine Road Clayton preferably by reducing the balcony rather than screening.
- (i) The extended decorative element encompassing the porch on the north side of Dwelling 5, reduced, and a porch comparable in size to other units provided.
- (j) Increased use of vertical timber claddings to the upper level of Dwelling 5 presenting to Thompson Street.
- (k) The provision of 1.7 metre (non-solid) privacy screens (in a naturalistic colour) between the balconies of Dwellings 2 and 5 and Dwellings 3 and 4 on one side only to prevent views between from occurring between the balconies.
- (l) Bins stored within or proximate to the garages with access via the garages except for Dwelling 1.
- (m) The fences facing Thompson Street east of Dwelling 5 and west of Dwelling 8, constructed of a dark timber material/colour and setback back a metre from the façade of the respective dwellings. The fence to the walkway Dwellings 6 & 7 setback at least 500mm.
- (n) The bicycle parking enclosure at the north-west corner of the site removed and the area included in the landscaped front setback.
- (o) Access to bicycle parking to be via the garages.
- (p) The Dwelling 6 and 7 storage sheds relocated to allow for pedestrian access around the rear of the dwellings.
- (q) A notation referring to relocation of the existing parking sign impacted by the Dwelling 1 crossing in accordance with Condition 21 below.



- (r) Removal of the rear garage doors of Dwellings 7 & 8 from the west elevation.
- (s) Upper level setbacks for the south facing upper level walls of Dwelling 7 compliant with Standard B20 of Clause 55.04-4 (North facing windows) whilst maintaining minimum internal room dimensions of Bedrooms 3 & 4 of at least 3 metres.
- (t) Compliance with Standard B21 of Clause 55.04-6 (Overshadowing) along the southern site boundary in terms of the private secluded open spaces of 1&2/67 Madeleine Road. Plans are to identify the shadows arising from the existing buildings on those properties and include the area calculations. Any change to the building envelopes must not result in reduced or horizontally altered setbacks.
- (u) Internal elevations (including notations on floor plans) of all Dwellings indicating compliance with Standard B23 (Internal views).
- (v) Any shadow impacts to the rooftop solar panels of 2/67 Madeleine Road identified with any impacts arising addressed.
- (w) A clear notation that all drainage information on the plan is indicative and subject to separate approval.
- (x) All trellis to be freestanding.
- (y) A detailed schedule of colours and materials reflecting those on the development plans.
- (z) A corner splay or area at least 50 per cent clear of visual obstructions extending at least 2 metres along the frontage road from the edge of an exit lane and 2.5 metres along the exit lane from the frontage, to provide a clear view of pedestrians on the footpath of the frontage road. The area clear of visual obstructions may include an adjacent entry or exit lane or adjacent landscaped areas, provided the landscaping in those areas is less than 900mm in height.
- (aa) The services meters setback a minimum of 1 metre from the ground floor front façades of Dwellings 5 and 8. The boxes are to be finished in a dark colour. The location and design of any proposed electricity supply meter boxes is to accord with Council's "Guide to Electricity Supply Meter Boxes in Monash".
- (bb) An updated Garden Area plan.
- (cc) An updated Tree Management Plan with any specific protection measures highlighted on the plan. Tree protection fencing locations are to be clearly shown.
- (dd) A Landscape Plan in accordance with Condition 4 of the permit.
- (ee) An updated ESD report of Condition 22 of this permit.



Layout not to be Altered

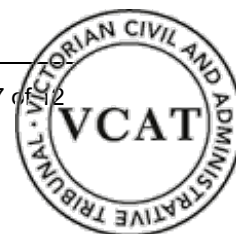
- 2 The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

Removal of Street Tree (southernmost tree in Madeleine Street nature strip)

- 3 The existing Crateagus street tree (southernmost tree in the Madeleine Street frontage) is to be removed and replaced by Council at the cost of the developer prior to the commencement of the development. See notes.

Landscape Plan

- 4 Concurrent with the endorsement of any plans requested pursuant to Condition 1, a landscape plan generally in accordance with that prepared by prepared Fratner Consulting Services dated January 2021 or other 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 show:
 - (a) Any changes to the layout arising from Condition 1.
 - (b) A mix of native and exotic canopy tree species replacing all tree species shown on the plans.
 - (c) The gravel areas in the front setback area of Dwellings 1, 5 and 8 removed and replaced with landscaping beds including shrubs.
 - (d) The provision of a canopy tree and landscaping bed between the Dwellings 6 and 7 entries. Stepping stones can be included to provide for pedestrian access to the side walkways.
 - (e) Minimisation within the private open spaces of areas identified as 'New Gravel Surface' with reinstatement of grass/garden areas.
 - (f) Screen planting provided forward of the Dwelling 8 fence.
 - (g) Details of the meter installations with height in the common driveway minimised, the use of muted colours and a landscaped setting provided so that their appearance from the street is substantially reduced.
 - (h) Plantings along site boundaries abutting adjoining dwellings to include screen plantings.
 - (i) Dense hardy low maintenance plantings between co-located driveways to 900mm in height and plantings within driveway lines of site to have plantings to the same height to increase greenery to the street.
 - (j) The specific number of plants provided to each area included ground covers.



- (k) Details of all garden edging.
- (l) Mulch to all garden beds.
- (m) Details of watering and maintenance.

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

Landscaping Prior to Occupation

- 5 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.

Landscaping Maintenance

- 6 The landscaping approved must be continued and maintained to the satisfaction of the Responsible Authority.

Tree Protection

- 7 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.
- 8 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.
- 9 Prior to occupation of the buildings confirmation in writing is to be provided to Council by the project arborist (and be retained on Council's file) confirming all recommended measures of Condition 1 (c) and the endorsed Tree Management Plan were implemented.

Drainage

- 10 The site must be drained to the satisfaction of the Responsible Authority and meet all requirements of South East Water.
- 11 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.
- 12 A plan detailing the drainage works must be submitted to the 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 All stormwater collected on the site 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 Engineering Department prior to works commencing.
- 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 150mm Council drain in the rear easement of 65 madeleine Road via a 900mm x 600mm junction pit to be constructed to Council standards. Note: If the point of connection cannot be located then Council's Engineering Department is to be notified immediately.
- 15 The 63 Madeline Road Council pit and the 150mm pipe from this pit to the newly constructed pit is to be abandoned and removed from the easement.
- 16 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.
- 17 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

- 18 Approval of each proposed crossing, and a permit for installation or modification of any vehicle crossing is required from Council's Engineering Department.
- 19 All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.
- 20 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed in accordance with Council standards and be to the satisfaction of the Responsible Authority.
- 21 The existing parking signage in the nature strip at the front of Dwelling 1 is to be relocated in accordance with written instructions obtained from Council's Engineering department. The sign is to be relocated at the cost of the permit applicant and be to the satisfaction of the Responsible Authority.

Sustainable Design Assessment

- 22 Concurrent with the endorsement of plans requested pursuant to Condition 1, an amended Sustainable Design Assessment addressing any changes required in response to Condition 1 impacting on the report, to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended

Sustainable Design Assessment will be endorsed and will form part of this permit. The amended Sustainable Design Assessment must be generally in accordance with the Sustainable Design Assessment prepared by Frater Consulting dated 7 April 2021.

Construction Management Plan

- 23 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 Plan 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:
- (a) Appropriate measures to control noise, dust and water and sediment laden runoff;
 - (b) Appropriate measures for the prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
 - (c) Appropriate measures relating to removal of hazardous or dangerous material from the site, where applicable;
 - (d) 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;
 - (e) A program for the cleaning and maintaining surrounding road surfaces;
 - (f) 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;
 - (g) Measures to provide for public Safety and site security;
 - (h) A plan showing the location of parking areas for construction and sub-contractors' 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;
 - (i) A Traffic Management Plan showing truck routes to and from the site;
 - (j) 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;



- (k) Appropriate measures to ensure that sub-contractors/tradespersons operating on the site are aware of and adhere to the requirements of the CMP;
- (l) The provision of contact details of key construction site staff; and
- (m) 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:
 - Monday to Friday (inclusive) – 7.00am to 6.00pm;
 - Saturday – 9.00am to 1.00pm;
 - Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines)
 - No works are permitted on Sundays or Public Holidays.

The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with by all contractors to the satisfaction of the Responsible Authority.

- 24 The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Bins

- 25 No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the street and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.

Urban Design

- 26 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

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

Cultural Heritage Management Plan

- 28 All requirements of the Cultural Heritage Management Plan No. 16929 approved on the 11 February 2021 or subsequent approval, by the Director of Heritage Services Aboriginal Victoria pursuant to Section 65(2) of the Aboriginal Heritage Act 2006, are to be met.

Expiry of permit for development

- 29 This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
- (a) The development is not started within two (2) years of the issue date of this permit.
 - (b) 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 –

