# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

# planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P2043/2019  Permit Application no. TPA/50110 |

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| CATCHWORDS |
| Section 79 of the *Planning & Environment Act* 1987; Monash Planning Scheme;  Student housing – GRZ6, Cls. 22.01 & 22.10 |

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| APPLICANT | 2 Parker Street Pty Ltd |
| RESPONSIBLE AUTHORITY | Monash City Council |
| respondent | Stephen Melis |
| SUBJECT LAND | 2 Parker Street, Clayton |
| WHERE HELD | Melbourne |
| BEFORE | Tracy Watson, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 26 August 2020 |
| DATE OF ORDER | 30 September 2020 |
| CITATION | 2 Parker Street Pty Ltd v Monash CC [2020] VCAT 1095 |

# Order

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & 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: | Eco-Urban Design Studio Pty Ltd |
| * Drawing numbers: | TP03(C) to TP07(C) – All Revision C |
| * Dated: | 21 February 2020 |

1. The decision of the Responsible Authority is set aside.
2. In permit application TPA/50110 a permit is granted and directed to be issued for the land at 2 Parker Street, Clayton in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

* Use and development of a three storey residential building (student accommodation for 23 students) and a reduction in the car parking requirements.

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| Tracy Watson **Member** |  |  |

**APPEARANCES**

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| For Applicant | Lorenzo Rigoni, town planner. Mr Rigoni called expert evidence from: Brett Young, traffic engineer; and Evan Dimitropoulos, landscape architect. |
| For Responsible Authority | James Turner, town planner. |
| For Respondent | Stephen Melis, in person. |

# INFORMATION

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| Description of Proposal | It is proposed to construct a three storey high residential building to accommodate 23 students. |
| Nature of Proceeding | Application under Section 79 of the *Planning and Environment Act* 1987 – to review the failure to grant a permit within the prescribed time[[1]](#footnote-1). |
| Zone and Overlays | Clause 32.08 – General Residential Zone, Schedule 6 (GRZ6). No overlays apply to the subject site. |
| Permit Requirements | Clause 32.08-2 – Use the land for a residential building. Clause 32.08-6 – Construct a residential building. Clause 52.06-6 – Provide a satisfactory number of car parking spaces. |
| Relevant Scheme, policies and provisions | Includes Clauses 11, 15, 16, 21.04, 22.01, 22.05, 22.10, 32.08, 52.06, 55, 65 and 71.02. |
| Land Description | The subject site is located on the eastern side of Parker Street in Clayton. The subject site has a rectangular shape with a frontage of 16.38 metres, a depth of 39.75 metres and a site area of 651m2. The subject site is abutted by other residentially developed properties. |

# REASONS[[2]](#footnote-2)

## What is this proceeding about?

1. The permit applicant lodged an application for review with the Tribunal in October 2019 against the Monash City Council’s failure to determine the permit application within the prescribed statutory timeframe. Subsequently, in March 2020, the Council decided that it does not support the proposal. The Council’s grounds of refusal argued at the hearing relate to the proposal’s neighbourhood character impact and its car parking arrangements.
2. Mr Melis, who is the owner of the property at no. 2/ 4 Parker Street, advised the Tribunal in April 2020 that the amended plans (which have now been formally substituted by the Tribunal) satisfy his concerns.
3. Based on the hearing process and all the relevant associated documentation, I consider that the key issues relate to whether the proposal is respectful of the neighbourhood character of the area and whether the proposal’s parking impacts are acceptable.
4. I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and the expert traffic and landscaping evidence, together with the applicable policies and provisions of the Monash Planning Scheme, I have decided to set aside the decision of the Responsible Authority. My reasons follow.

## Is the proposal respectful of the neighbourhood character of the area?

1. The Council submitted that the proposed building is too visually dominant and ‘block like’ due to the provision of insufficient building breaks and the absence of an open garden setting. Specifically, the Council submitted that the proposed side setbacks allow for insufficient landscaping and will result in excessive pruning of the neighbouring Tree nos. 1 and 2.
2. It is important to highlight that the subject site is clearly suitable for built form intensification and the provision of student housing as demonstrated by its:

* Location in the GRZ6 which has an objective to facilitate housing diversity, including apartment buildings. The GRZ6 also applies to land to the south and east of the subject site.
* Interface with the Residential Growth Zone immediately to the north and opposite along the western side of Parker Street where buildings up to 4 storeys high are anticipated.
* Distance from land identified for a lower-order level of built form change.
* Location within the ‘Monash National Employment Cluster and Clayton Activity Centre – Housing Diversity Area’ where local policy (such as at Clauses 21.04 and 22.01) seeks housing diversity, including to meet the accommodation needs of students in apartment-type building.
* Nomination as a preferred location for student accommodation under Clause 22.10 of the planning scheme (the subject site is only 150 metres from the Clayton Campus of Monash University).
* Visual relationship with the Mannix College complex located along the western side of Parker Street which includes a range of robust buildings.

1. It is within this context of housing growth, that the broadly-applied Clause 22.01 policy provisions need to be considered. In other words, whilst the proposal still needs to be contextually responsive to the existing conditions of the abutting properties, and the valued garden city character more generally, this is tempered by the desire for affordable student housing in more robust buildings in this location.
2. The range of broader policy statements are given more specificity in Schedule 6 to the GRZ through local variations to Standards B6 (street setback), B13 (landscaping), B17 (side and rear setbacks), B28 (private open space) and B32 (front fence height). The proposal meets or exceeds all of these Clause 55 local variations.
3. The proposal includes the following features which ensure that the building is not unacceptably bulky:

* Ground level setbacks of 6-7 metres (which exceed the 5.15 metres average setback of the abutting properties, and the 4 metres setback permissible by the Standard B6 local variation).
* A visually recessive double garage (accessed from a 7 metres long driveway).
* The absence of boundary walls.
* A visually recessive upper level (third storey) which has minimum setbacks of 9.355 metres from the front boundary, 3.0 metres from the northern side boundary, 4.025 metres from the southern side boundary (including a raked ceiling at this level as well as at the second storey level) and 7.596 metres from the rear boundary.
* A maximum height of 9.78 metres (with the maximum permissible height being 11.5 metres).
* A range of materials.

1. I therefore consider that the proposed building does not require any further visual breaks or additional setbacks, nor does it require changes to its roof profile or materiality.
2. The proposal provides landscaping along all edges of the subject site, and includes five trees in the front garden area and four trees in the rear garden area. Mr Dimitropoulos’ evidence demonstrates that the proposed species selection is appropriate for the spaces they are planted in.
3. The local variation to Standard B13 requires at least one canopy tree, plus one canopy tree per 5 metres of site width. The subject site has a width of 16 metres, generating a requirement of four canopy trees. The proposal is for the planting of nine canopy trees which have mature heights ranging from 7 to 10 metres.
4. The extent of proposed landscaping along the north and south sides of the subject site is consistent with the local variation to Standard B13 which simply seeks a mixture of vegetation, including indigenous species, in the side setback areas.
5. In this case I do not think that canopy tree planting is necessary along the side boundaries, as the proposed landscape plan achieves the desired open garden setting.
6. Furthermore, the proposal does not encroach on the Tree Protection Zones of Tree nos. 1 and 2 on the neighbouring property. I am satisfied that the proposal will not impact on the long term viability of these trees.
7. I consider that the proposed design response strikes an appropriate balance between achieving the desired housing growth and intensification, on the one hand, and also providing the desired open garden setting, on the other hand.
8. Overall, I am satisfied that the proposal complies with Clause 55 of the planning scheme and is consistent with the built form and landscaping outcomes sought by the GRZ6 (as described in the five neighbourhood character objectives) and the relevant aspects of the planning scheme’s local policies.

## Are the proposal’s parking arrangements satisfactory?

1. The Council submitted that the proposal should provide 6 on-site spaces to accord with Clause 22.10 of the planning scheme. Moreover, the Council submitted that whilst the use of a car stacker is supported in principle, it opposes the specifics of the proposed arrangements in relation to the driveway ramp grade and the need for vehicles to reverse from the subject site.
2. There is no specific permit trigger for reducing the proposed number of on-site car spaces, as student accommodation is not specified under Table 1 of Clause 52.06-5 of the planning scheme. However, Clause 52.06-6 of the planning scheme provides that:

Where a use of land is not specified in Table 1 or where a car parking requirement is not specified for the use in another provision of the planning scheme or in a schedule to the Parking Overlay, before a new use commences or the floor area or site area of an existing use is increased, car parking spaces must be provided to the satisfaction of the responsible authority.

1. In this case, pursuant to Clause 22.10-4 of the planning scheme, it is policy to assess the proposal against the performance measure that car spaces should be provided on site at a rate of a minimum of 0.3 spaces per bed. This rate generates a requirement for 6 on-site spaces, whereas 5 on-site spaces are proposed (a reduction of one space).
2. The Clause 22.10-4 policy also states that:

A Traffic & Parking Impact Report prepared by a qualified traffic engineer should be submitted as part of any planning permit application that provides parking at a rate less than stated above. This report should provide evidence based on investigation of similar facilities with similar locational characteristics to justify any reduction in on-site parking rates.

1. This means that the policy anticipates circumstances where a lower rate is appropriate. The expert evidence of Mr Young incorporates a detailed car parking demand assessment, including data about car ownership rates of other nearby student accommodation. Based on the data in the expert evidence, the proposal would likely have a demand for 2 on-site spaces.
2. On this basis (along with the site’s proximity to public transport; the existing on-street parking restrictions; and the cap on the number of resident permits available to future occupants) I think that the reduction in the on-site parking rate from 0.3 spaces to 0.22 spaces is justified.
3. Mr Young’s evidence also includes an assessment against Design Standard 1 – Accessways of Clause 52.06 of the planning scheme. A variation to one of these standards is required as the vehicles accessing the five on-site spaces will need to reverse out of the site. The standard is that where an accessway serves four or more car spaces, cars should exit the site in a forwards direction.
4. The expert evidence details five factors which result in Mr Young concluding that in this case reversing out of the site is acceptable. His evidence is also that the accessway gradient is appropriate.
5. I accept Mr Young’s evidence and his conclusions. I therefore find that the proposal meets the purposes of Clause 52.06 of the planning scheme and that the car parking arrangements are satisfactory pursuant to Clause   
   52.06-8 of the planning scheme.

## Conclusion

1. For the reasons explained above, the decision of the Responsible Authority is set aside. A permit is issued subject to conditions.

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| Tracy Watson **Member** |  |  |

# APPENDIX A

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| **PERMIT APPLICATION NO:** | TPA/50110 |
| **LAND:** | 2 Parker Street, Clayton |
| **WHAT THE PERMIT ALLOWS:** | |
| * Use and development of a three storey residential building (student accommodation for 23 students) and a reduction in the car parking requirements, in accordance with the endorsed plans. | |

# conditions

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| 1. | Before the development starts, three copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. The submitted plans must clearly delineate and highlight any changes. 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 Eco-Urban Design Studio Pty Ltd dated 21 February 2020 Revision C but modified to show:   1. Fencing along the northern boundary to have a minimum height of 1.8 metres. 2. Tree protection measures in accordance with the arborist report by Tree Response dated 17 April 2019 to protect trees on adjoining properties. 3. The location, dimensions and materials of meter boxes to the satisfaction of the Responsible Authority. |
| 2. | The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. |
| 3. | A landscape plan generally in accordance with the plan prepared by Etched dated Mar. 2020, drawing no. L-VC1, to scale and dimensioned must be submitted to and approved by the Responsible Authority prior to the commencement of any works. The plan must show the proposed landscape treatment of the site including:-   1. Provision of a canopy trees with spreading crowns within the private open space areas of the site. 2. planting to soften the appearance of hard surface areas such as driveways and other paved areas. 3. a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material. 4. the location and details of all fencing. 5. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site. 6. details of all proposed hard surface materials including pathways, patio or decked areas.   When approved the plan will be endorsed and will then form part of the permit. |
| 4. | Before the occupation 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 then maintained to the satisfaction of the Responsible Authority. |
| 5. | No more than 23 students must reside at the premises at any one time. |
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| 6. | The nature strip tree must be protected by temporary rectangular wire fencing as per Australian Standards erected prior to commencement of works until completion. |
| 7. | All common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line. |
| 8. | The amenity of the area must not be detrimentally affected by the use or development, through the:   1. transport of materials, goods or commodities to or from the land; 2. appearance of any building, works or materials; 3. emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil; 4. presence of vermin. |
| 9. | Prior to the commencement of works on the site, the owner shall prepare a Waste Management Plan for the collection and disposal of garbage and recyclables for all uses on the site. The Waste Management Plan shall provide for:   1. The method of collection of garbage and recyclables for uses; 2. Designation of methods of collection including the need to provide for private services or utilisation of council services; 3. Appropriate areas of bin storage on site and areas for bin storage on collection days; 4. Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas; 5. Litter management.   A copy of this plan must be submitted to and approved by the Responsible Authority. |
| 10. | 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. |
| 11. | Adequate provision shall be made for the storage and collection of garbage and other solid wastes and these facilities are to be located on the site to the satisfaction of the Responsible Authority. |
| 12. | Before the development starts, a construction management plan must be prepared and submitted to the Responsible Authority for approval. The plan must be to the satisfaction of the Responsible Authority. Once approved, the plan must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:   1. measures to control noise, dust and water runoff; 2. prevention of silt or other pollutants from entering into the Council’s underground drainage system or road network; 3. the location of where building materials are to be kept during construction; 4. site security; 5. maintenance of safe movements of vehicles to and from the site during the construction phase; 6. on-site parking of vehicles associated with construction of the development; 7. wash down areas for trucks and vehicles associated with construction activities; 8. cleaning and maintaining surrounding road surfaces; 9. a requirement that 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. This does not include excavation or the use of heavy machinery.) |
| 13. | The construction works associated with the permitted development must only be carried out during the following hours:   * Monday to Friday (inclusive) – 7:00am to 6pm; * Saturday – 9am to 1pm; * Saturday – 1pm to 5pm (only activities associated with the erection of buildings);   unless otherwise approved in writing by the Responsible Authority. |
| 14. | Prior to the endorsement of plans referred to in Condition 1 the owner of the land must enter into an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act 1987. In addition to the usual mechanical provisions, the agreement must provide for the following matters:   * + That no person may reside in the building unless that person is a bona fide student or academic whether part time, full time, short term or resides there in a supervisory, management or caretaker capacity;   + Car parking spaces are only permitted to be used by the occupants of the units and their visitors.   + Car spaces must not be individually subdivided, on-sold or leased to any other person other than an owner or occupant of the premises.   + Residents of the units will be entitled to no more than two car parking permits for on street car parking.   + Should the land cease to be used for student housing, a new planning permit may be required for an alternative use.   + The student accommodation premises must be managed by a single entity.   + An operational management plan prepared and implemented to the satisfaction of the Responsible Authority.   + The cost of the preparation and review of the Section 173 Agreement and its registration on the title of the land must be borne by the owner of the land. |
| 15. | Prior to the commencement of the use an Operational Management Plan concerning the student accommodation prepared to the satisfaction of the Responsible Authority must be submitted and approved by the Responsible Authority. The plan should detail but not be limited to:   1. Student accommodation units are to be managed and remain under the control of a single operator responsible for the operation and maintenance of the entire premises. 2. The contact details of the management of the premises displayed in a manner and location that it is visible to any person entering the site. This information is to be updated as required immediately following any change to the nominated responsible contact person. 3. After hours contact details for management of the facility. 4. Management of the car park including access arrangements. 5. Maintenance of buildings and grounds, including all landscaped areas.   When approved, the Operational Management Plan will be endorsed to form part of this permit and must be implemented to the satisfaction of the Responsible Authority. |
| 16. | The proposed vehicle crossing is to be constructed in accordance with the Monash City Council standards. |
| 17. | The mechanical car stacker is to be maintained in a good working order and be permanently available for the parking of vehicles in accordance with their purpose, to the satisfaction of the Responsible Authority. |
| 18. | No equipment, services, architectural features or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority. |
| 19. | 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. |
| 20. | 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 trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or * shaping the internal driveway so that stormwater is collected in grated pits within the property; and or * another Council approved equivalent. |
| 21. | All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council’s Engineering Department prior to drainage works commencing. |
| 22. | Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority. |
| 23. | This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:   * The development is not started before 2 years from the date of issue*.* * The development is not completed before 4 years from the date of issue. * The use is not commenced within 2 years of completion of development.   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 months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires. |

**---** **End of Conditions** ---

1. Section 4(2)(d) of the *Victorian Civil & Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse the permit application. [↑](#footnote-ref-1)
2. I have considered the written and oral submissions of all the parties that appeared, all the written and oral expert evidence, all the exhibits tendered by the parties and experts, and all the statements of grounds filed. I do not recite or refer to all of the contents of those documents in these reasons. [↑](#footnote-ref-2)