

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P504/2024
PERMIT APPLICATION NO.TPA/55348

CATCHWORDS

Monash Planning Scheme; Four dwellings; General Residential Zone Schedule 6; strategic context; visual bulk; landscaping; overlooking; dwelling entry; vehicle access; waste management.

APPLICANT	Dandenong Rd Clayton Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	1770 Dandenong Road CLAYTON VIC 3168
HEARING TYPE	Hearing
DATE OF HEARING	18 September 2024
DATE OF ORDER	23 September 2024
CITATION	Dandenong Rd Clayton Pty Ltd v Monash CC [2024] VCAT 903

ORDER

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

 - Prepared by: Fd Architects Pty Ltd
 - Drawing numbers: TP01-TP05, TP05.1, TP06, TP07.0-TP07.6 and TP08. All Revision F
VCAT Issue
 - Dated: 29 July 2024
 - Prepared by: Bradbury Culina
 - Drawing numbers: 4340-A 1/1
 - Dated: 30 July 2024
- In application P504/2024 the decision of the responsible authority is set aside.



- 3 In planning permit application TPA/55348 a permit is granted and directed to be issued for the land at 1770 Dandenong Road Clayton VIC 3168 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
- The construction of two or more dwellings on a lot;
 - The creation or alteration of access to a road in a Transport Zone 2.

Michael Nelthorpe
Member

APPEARANCES

For applicant

Mr Phillip Rygl, town planner of Connect Town Planning. He called Mr Evan Boloutis, traffic engineer of EB Traffic Solutions to give evidence.

For responsible authority

Mr Peter English, town planner of Peter English & Associates.



INFORMATION

Description of proposal	Four attached dwellings with ground level car parking. Dwellings 1 and 4 have two storeys and Dwellings 2 and 3 have three storeys.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone Schedule 6 The site abuts a road in a Transport Zone 2.
Permit requirements	Clause 32.08-6: to construct two or more dwellings on a lot. Clause 52.29-2: to create or alter access to a road in a Transport Zone 2.
Relevant scheme policies and provisions	Clauses 11, 15, 16, 32.08, 52.06, 52.29, 55, 65 and 71.02.
Land description	The site is on the south side of Dandenong Road and is three lots to the east of Dandenong Road's intersection with Browns Road. The land forms the shape of a slightly irregular parallelogram. It has an 18.8m frontage, a maximum depth of 46.34m and a site area of 775sqm. A single storey dwelling occupies the site.
Tribunal inspection	16 September 2024



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Dandenong Rd Clayton Pty Ltd ('applicant') seeks a review of the decision of the Monash City Council ('council') to refuse to grant a permit for the construction of four dwellings at 1770 Dandenong Road and for the alteration of access to road in a Transport Zone 2.
- 2 The council relies on grounds relating to:
 - a The site's existing physical context.
 - b The proposed landscaping.
 - c The visual impact of the proposed built form.
 - d The proposal's integration with the street.
 - e The proposed pedestrian entries.
 - f The internal amenity of the proposed dwellings.
 - g The design of the vehicular accessway.
- 3 The applicant relies on amended plans that, in their submission, address several of the council's concerns. The changes reduce the height of the front fence, alter the presentation to the street, increase the size of several bedrooms and finesse the pedestrian pathway and the landscape response. They say that the amended proposal is an acceptable planning outcome for the site.
- 4 I made my decision after hearing submissions and evidence. I gave oral reasons at the time and committed to providing a written summary of these reasons. I provide that summary after briefly describing the site's physical and strategic context and the proposal.

THE SITE'S PHYSICAL AND STRATEGIC CONTEXT

- 5 The site is located on a major arterial road, with access from a service lane. Most surrounding lots contain low scale multi-dwelling developments of varying eras and scales. Landscaping is patchy and some front yards appear to be used for vehicle parking.
- 6 The site is at the outer edge of the Monash National Employment and Innovation Cluster (MNEIC). This is reflected in the zoning of the land. Schedule 6 of the General Residential Zone identifies the site and its immediate surrounds as a housing diversity area that services as an interface between the MNEIC and the lower scale areas beyond its perimeter.

¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.



- 7 The Schedule's neighbourhood character objectives seek to facilitate units, townhouses and apartment buildings that respect the character of the streetscape through landscaping in the front setback and respect the amenity of their residential neighbours through breaks and recesses in the built form. The objectives also encourage the provision of an open garden setting and the planting of canopy trees.
- 8 The Schedule varies several quantitative standards of clause 55 of the Monash Planning Scheme. Front and rear setbacks must be a minimum of 4m, 50sqm of private open space or balconies of at least 10sqm must be provided, front fence heights are limited to 900mm and building height is increased to 11.5m.
- 9 The decision guidelines of the Schedule require consideration of the development's transition to built form on adjoining sites, amongst other things.

THE PROPOSAL



Figure 1: The design response in its physical context.²

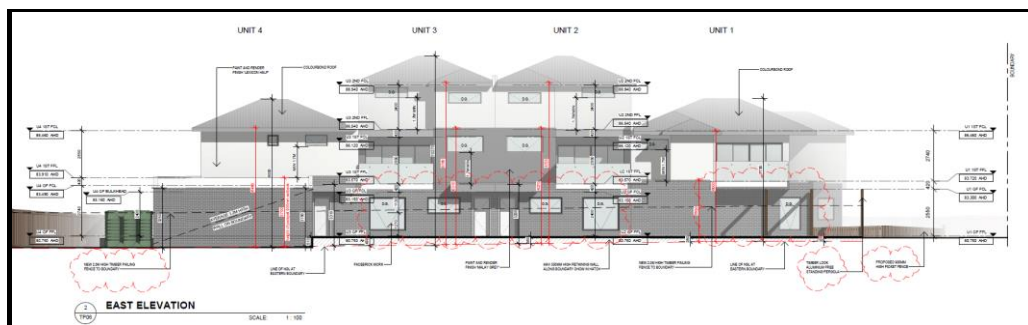


Figure 2: The east elevation.³

- 10 It is proposed to demolish the existing dwelling and construct four attached dwellings down the length of the site. Dwellings 1 and 4 have two storeys

² From Sheet TP02 of the amended plans.

³ From Sheet TP06 of the amended plans.

while Dwellings 2 and 3 have three storeys. Pedestrian access is from a shared path along the site's eastern boundary. Vehicle access is from a shared accessway along the site's western boundary.

- 11 Dwellings 1, 2 and 3 have living areas and areas of secluded private open space (balconies) on the first floor while Dwelling 4 has living areas and an area of secluded private open space at the ground level.
- 12 The proposal has a conventional appearance. It is clad in brick at the ground level and in rendered lightweight materials at the first and second levels. Each dwelling has a pitched roof with eaves. A modest degree of cantilevered first floor form is used, particularly on the western side of the dwellings and the third storey of Dwellings 2 and 3 is recessed from the built form below.

MY REASONS

- 13 I am not persuaded that the council has given sufficient weight to the State planning policies that encourage intensive development in the MNEIC.
- 14 I acknowledge that the site is near the MNEIC's northern edge. I also acknowledge that the zoning regime promotes a transition in intensity from the MNEIC's core to the lower scale areas beyond its perimeter. I accept that the land in Schedule 6 of the General Residential Zone, which includes the site, contributes to this transition.
- 15 However, I consider that the policy framework promotes intensive growth within the framework set by Schedule 6 of the General Residential Zone. This is consistent with the observations of Member Taranto in *Radium Development Pty Ltd v Monash CC*.⁴
- 16 The variations to the quantitative standards of clause 55 that guide building height and front setbacks promote three storey buildings that extend closer to the street. These variations influence assessments of the visual impact of built form (visual bulk) by facilitating developments that are taller and larger than what might be found in a residential hinterland setting.
- 17 In this context, I find that the visual impact of the proposed built form when viewed from the neighbouring properties is acceptable. I consider that the design responds acceptably to these interfaces. I note that:
 - a The three storey form is limited to the centre of the site where it is generally adjacent to the first of the two dwellings on the site to the east.
 - b The built form is set back a generous distance to the more sensitive development to the west. I say this development is more sensitive because four dwellings abut the side boundary, each with a limited

⁴ [2022] VCAT 972 at paragraphs 41 to 53.

amount of secluded private open space between the dwelling and the shared boundary.

c The built form is well articulated along its side elevations.

- 18 I find that the combination of the policy framework and the design response results in an acceptable planning outcome.
- 19 I am not persuaded by the council's submissions that the site's physical context makes the proposal unacceptable. The council's argument is that the surrounding low-scale unit developments are unlikely to change in the foreseeable future due to the practical difficulties in re-consolidating these units into larger development sites. While this may be the case, I consider that the proposal can reasonably adopt the current settings of the Monash Planning Scheme.
- 20 I also consider that it is reasonable that the proposal extends some depth into the lot as this allows for greater densities to be achieved. It is also common in the surrounding area.
- 21 I consider that changes made at the site's frontage through the amended plans adequately address the issue of the proposal's integration with the street.
- 22 Subject to introducing some clear glazing to the front doors of Dwellings 2 and 3, I am satisfied with the proposed pedestrian access. The use of a shared path along one side boundary is a common design response.
- 23 In terms of the internal amenity of the proposed dwellings, I note that the applicant accepts that additional screening of the balconies and some windows is required. Despite this, I am satisfied that the internal amenity of the dwellings is acceptable. I acknowledge the applicant's submission that floor to ceiling sliding doors provide access to the balconies of Dwellings 2 and 3 and allow a reasonable degree of daylight to the living areas. I also acknowledge that the living areas have windows on their west elevation thus providing a second source of daylight to these spaces.
- 24 In terms of vehicle access, Mr Boloutis' evidence persuades me that the proposed corrective manoeuvres are an acceptable part of the design of this proposal. I also agree with Mr Boloutis that it is improbable that drivers undertaking these manoeuvres will cause congestion in the service lane. I accept his opinion that drivers will become familiar with the manoeuvres required to enter and exit their car parking spaces. As such, I regard these spaces as safe and convenient.
- 25 I have left the issue of waste collection to the applicant and the council. I consider that this issue can be resolved through further negotiation. Ultimately, it is not a ground to refuse the grant of a permit.

- 26 At the hearing, we discussed the draft conditions circulated by the council. Based on this discussion and on my reasons, I have revised the draft conditions as follows:
- a Draft condition 1a) is deleted for reasons given earlier.
 - b Draft condition 1b) is deleted because groundcovers with a maximum height of 0.15m will occupy the section of the landscape strip adjacent to the shared accessway. This accord with Mr Boloutis' recommendation as it will allow vehicles to overhang this section of landscape strip.
 - c Draft condition 1c) is deleted because I have found that the amended Landscape Plan is acceptable.
 - d Draft condition 1d) is amended to require entry doors with clear glazed panels for Dwellings 2 and 3 given that including windows beside these doors is not practical. This is not required for Dwelling 4 because it has a window adjacent to the entrance.
 - e The council supports the deletion of draft condition 1e) because its requirements are shown in the amended plans.
 - f Draft condition 1f) is deleted because I am satisfied by the proposed widths of the eastern first floor setbacks. They range between 1.68m and 3.21m.
 - g Draft condition 1g) is deleted because I am satisfied by the proposed widths of the western first floor setbacks. They range between 4.640m (estimated) and 6.070m.
 - h The council supports the deletion of draft conditions 1h), 1i) and 1j) because the requirements of these conditions are shown in the amended plans.
 - i Draft condition 1l) is amended and now requires a free-standing screen set back a minimum of 400mm from the rear boundary that limits views from the rear deck into the secluded private open space of 3/7 Seascape Street to the extent required by Clause 55.04-6 of the Monash Planning Scheme.
 - j Draft conditions 1t) and 10 are amended to allow either waste to be collected privately or by the council as this is a matter to be negotiated between the council and the applicant. Draft condition 1t) ii) is deleted because I accept Mr Boloutis' evidence that a waste collection vehicle cannot enter and exit the site in a forward direction.
 - k Draft condition 4 is amended to refer to the Landscape Plan prepared by Bradbury Culina as I am satisfied with the content of that plan. I have deleted draft conditions 4a) to 4h) as the Bradbury Culina plan shows the details required by these sub-conditions except for draft condition 4a), which requires a survey of existing vegetation. I



consider that a survey is not necessary when all vegetation on site will be removed. Apart from this, I am satisfied with the Landscape Plan showing four, rather than five, canopy trees as I find that the varied landscaping standard should be rounded down rather than rounded up.

- l I have deleted draft conditions 24 and 25 as these conditions duplicate requirements set by other conditions.
- m I have deleted draft condition 26 that informs the applicant of the need to obtain permits for crossover and stormwater connection works as this is not a condition of a permit.
- n I have deleted draft condition 27 that prohibits a reticulated gas connection as this condition only applies to permit applications lodged after the gazettal of VC250, which was 1st January 2024 whereas this application was lodged on 20th September 2023.

CONCLUSION

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

Michael Nelthorpe
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/55348
LAND	1770 Dandenong Road CLAYTON VIC 3168

WHAT THE PERMIT ALLOWS

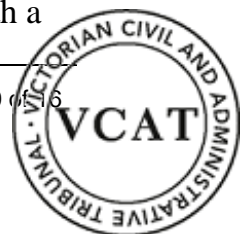
In accordance with the endorsed plans:

- The construction of two or more dwellings on a lot;
- creation or alteration of access to a road in a Transport Zone 2.

CONDITIONS

Amended Plans

- 1 Before the development starts, 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 submitted to Council and VCAT prepared by Fd Architects, Revision F dated 29 July 2024, including pages TP01 to TP05, TP05.1, TP06, TP07, TP07.1 to TP07.6 and TP08, but modified to show:
 - (a) The front doors of Dwellings 2 and 3 must contain panels of clear glazing that are located to provide views of the front porch from within these dwellings.
 - (b) All overlooking protection measures are to be annotated on the floorplans.
 - (c) Provision of a free-standing screen set back a minimum of 400mm from the rear boundary that limits views from the rear deck into the secluded private open space of 3/7 Seascape Street to the extent required by Clause 55.04-6 of the Monash Planning Scheme.
 - (d) Provision of a privacy screen with a height of 1.7 metres above the finished floor level of the Dwelling 2 balcony and a maximum of 25% transparency, to be installed around the eastern and southern edges of the balcony.
 - (e) Provision of a privacy screen with a height of 1.7 metres above the finished floor level of the Dwelling 3 balcony and a maximum of 25% transparency, to be installed along the eastern side of the balcony.
 - (f) The west facing kitchen windows on the first floor of Dwellings 1, 2 and 3 are to include fixed obscure glazing or privacy screening with a



maximum of 25% transparency to a height of 1.7 metres above finished floor level.

- (g) The east facing second floor bedroom 2 windows in Dwellings 2 and 3 are to include sill heights or fixed obscure glazing to a height of 1.7 metres above finished floor level.
 - (h) The location and design of any proposed electricity supply meter boxes. The electricity supply meter box structure must be located at or behind the setback alignment of buildings on the site.
 - (i) 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 where more than one lane is provided, or adjacent landscaped areas, provided the landscaping in those areas is less than 900mm in height.
 - (j) The amended plans must include all ESD initiatives outlined in the Sustainable Design Assessment submitted with the application, prepared by ES Civil Engineering dated 16 November 2023.
 - (k) An updated Waste Management Plan to include:
 - i Private or council waste collection
 - ii Cleaning / washing
 - iii Drainage to sewer
 - iv Accessibility
 - v Bin manoeuvrability
 - vi All waste streams
 - (l) A Landscape Plan in accordance with condition 4 of this Permit.
- All to the satisfaction of the Responsible Authority.

No Alteration or Changes

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

Sustainable Design Assessment

- 3 Upon approval of the amended plans to meet the condition 1 requirements of the permit, the Sustainable Design Assessment 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.



Landscaping

- 4 Before the commencement of buildings and works, 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 prior to the commencement of any works. The plan must be generally in accordance with the Landscape Plan prepared by Bradbury Culina, Drawing 4340-A 1/1 dated 30 July 2024 and must show:-
- (a) details of all proposed hard surface materials including pathways, patio or decked areas;
 - (b) an in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the Responsible Authority;
 - (c) the location of external lighting (if any)

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

Landscaping Maintenance

- 5 All landscaping works shown on the endorsed landscape plan must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.

Tree Protection

- 6 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.
- 7 No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained during the construction period of the development hereby permitted.
- 8 All existing vegetation shown on the endorsed plans must be suitably marked before any development starts on the site and that vegetation must not be removed, destroyed or lopped without the written consent of the Responsible Authority.

Landscaping Prior to Occupation

- 9 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.

Waste Management Plan

- 10 Concurrent with the endorsement of plans required pursuant to Condition 1, an amended Waste Management Plan must be submitted and approved by the Responsible Authority.

The plan must provide details of a regular private waste (including recyclables) collection service for the subject land or a council-run kerb side collection and be prepared in accordance with the Multi-Unit and Commercial Developments Waste Management Plan Guide for Applicants to the satisfaction of the Responsible Authority.

The plan must include the following:

- (a) Private or council waste collection of all waste from the land.
- (b) Waste volume calculation and total waste generated per waste stream.
- (c) Frequency of Waste collection and permitted collection times.
- (d) Plans showing the location of bin storage areas, required bin storage equipment and features, number of bins and location of temporary bin storage at collection point.
- (e) Provision of bin cleaning equipment, washing facilities and sewer disposal within the waste storage area.
- (f) Type / Size of private waste vehicles.

Construction Management Plan

- 11 Prior to the commencement of any site works (including any demolition and excavation), a Construction Management Plan ('CMP') must be submitted to 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.
- (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.
- (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.

Drainage

- 12 The minimum Finished Floor Level of the dwellings is to be at least 80.75 metres Australian Height Datum ('AHD') to the satisfaction of the Responsible Authority.
- 13 The minimum Finished Floor Level of the garages is to be at least 80.45 metres AHD to the satisfaction of the Responsible Authority.
- 14 All service infrastructure (gas, water, electricity, etc) is to be removed from the easement to the satisfaction of the Responsible Authority.
- 15 The site must be drained to the satisfaction of the Responsible Authority.



- 16 Engineering permits must be obtained for new, altered or removal of vehicle crossings, works within the Road Reserve and stormwater connections.
- 17 Tree planting should be kept clear of any drainage easement.

Department of Transport – Determining Authority Reference No: PPR 44418/23

- 18 Prior to the occupation of the buildings hereby approved, the redundant and vehicle crossing must be removed, and the area reinstated to kerb and channel to the satisfaction of and at no cost to the Head, Transport for Victoria.
- 19 Prior to the occupation, the crossover and driveway must be constructed to satisfaction of the Responsible Authority and at no cost to the Head, Transport for Victoria.

Road Infrastructure

- 20 Approval of each proposed crossing, and a permit for installation or modification of any vehicle crossing is required from Council's Engineering Department.
- 21 The proposed crossing is to be constructed in accordance with the City of Monash standards.
- 22 The proposed crossover and the shared accessways must be a minimum of 3.0 metres in width.
- 23 The existing redundant crossing is to be removed and replaced with kerb and channel. The footpath and nature strip are to be reinstated to the satisfaction of the Responsible Authority.

Completion of Buildings and Works

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

Permit Expiry

- 25 This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987* Vic, if one of the following circumstances applies:
 - (a) The development has not started before two years from the date of issue.
 - (b) The development is not completed before four years from the date of issue.
 - (c) The use is not started before four years from the date of issue.

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

- (a) within 6 months afterwards if the use or the development has not commenced; or
- (b) within 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 –