VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P466/2021  Permit Application no. TPA/51519 |
| CATCHWORDS | |
| Application under Section 77 of the *Planning and Environment Act 1987*. Monash Planning Scheme. Residential Growth Zone, Schedule 3. Design Response. Amenity. | |

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| **Applicant** | Salpina Pty Ltd |

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

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| SUBJECT LAND | 17 Royalty Street  CLAYTON VIC 3168 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 20 August 2021 |
| Date of iNterim Order | 23 August 2021 |
| DATE OF ORDER | 16 September 2021 |
| CITATION | Salpina Pty Ltd v Monash CC [2021] VCAT 1049 |

# Order

1. In application P466/2021 the decision of the responsible authority is set aside.
2. In planning permit application TPA/51519 a permit is granted and directed to be issued for the land at 17 Royalty Street, Clayton in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

The construction of four (4) triple storey dwellings.

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| Cindy Wilson  **Member** |  |  |

# Appearances

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| For applicant | Mr Andrew Clarke, town planner of Clarke Planning Pty Ltd |
| For responsible authority | Ms Kate Kennedy, solicitor of Planology |

# Information

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| Description of proposal | Development of four triple storey dwellings |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | Residential Growth Zone, Schedule 3 |
| Permit requirements | Clause 32.07-5 A permit is required to construct two or more dwellings on a lot in the Residential Growth Zone. |
| Land description | The review site is located on the west side of Royalty Street, Clayton, north of Hourigan Avenue. It is irregular in shape with a frontage of 20.4 metres and a site area of 848 square metres and currently contains an existing house. |

# Reasons[[1]](#footnote-2)

# what is this proceeding about?

1. A proposal for four triple storey dwellings at 17 Royalty Street, Clayton has been refused by Monash City Council (Council). The applicant seeks a review of that decision.
2. Prior to the hearing, amended plans for the proposal were circulated. After hearing from the parties, I allowed substitution of the amended plans for those considered by Council.[[2]](#footnote-3)
3. Council’s grounds of refusal relate to an inappropriate design response to the Residential Growth Zone, Schedule 3 (RGZ3), excessive visual bulk, poor internal amenity, inefficient car parking provision and inadequate waste management. The substituted plans do not alter the concerns of Council.
4. The statement of grounds received raises issues about the building height and bulk, inadequate setback from the rear boundary and overlooking to the rear.
5. The applicant submits the proposal, in its amended form, achieves full compliance with the varied standards in the Residential Growth Zone, Schedule 3, proposes an articulated built form, avoids unacceptable amenity impacts, achieves appropriate internal amenity and provides acceptably for car parking and waste management.
6. The Tribunal must decide if a permit should be granted and if so, what conditions should apply.
7. Having considered the submissions and the material provided at the hearing and had regard to the Monash Planning Scheme, I have decided a permit should issue for the proposal subject to alterations to improve internal amenity outcomes for future residents. I reach that position based on my findings on the following key questions:

* Is the design response acceptable?
* Is the amenity for future residents appropriate?
* Are there unacceptable amenity impacts to adjoining properties?
* Is the car parking provided sufficient?
* Are the arrangements for waste management acceptable?

## Is the design response acceptable?

#### In summary, what do the parties say?

1. Council acknowledges that the RGZ is a zone where new character is anticipated and encouraged and where the purpose does not refer to respect for neighbourhood character. Council says appropriate application of the design objectives of RGZ3, the varied clause 55 standards and decision guidelines means elements of the garden city character should be achieved even though more intensive built form is anticipated.
2. It is Council’s submission that the proposal is an unacceptable design response and does not achieve the design objectives of RGZ3 based on the following:

* The presentation to the street extends broadly across the majority of the frontage, with a prominent two storey frame.
* With a 4 metre front setback, the built form sits forward of the adjoining single storey dwellings (which have setbacks of 7.5 and 7.3 metres). Although the setback is not a concern per se, the flat single plane of dwelling 1 along the ground level and the 2 metre high paling fence that continues across to the northern side boundary will result in visual bulk. The encroachment of the porch into the 4 metre setback together with the driveway will reduce the garden setting and emphasis the hard surfacing and built form to the front of the site.
* The proposal does not respond to the RGZ decision guidelines that seek significant breaks and recesses in building massing to avoid large block like structures dominating the streetscape.
* The presentation of the proposal to both side boundaries provides inadequate visual relief, reading as a flat plane with marginal articulation and continuity of attached built form. The upper level gap provides little visual break. The cantilevering of the first floor over the ground floor on the south elevation amplifies the visual bulk.
* To the sensitive interface with secluded private open space (spos) of the dwelling to the rear, the proposal will appear overbearing with a block like structure, a three storey form setback 5.2 metres. The finishes on this elevation are grey render and grey cladding with none of the softer materials and finishes used in other elevations.
* Inadequate area provided for landscaping in the front setback (constrained by the driveway, porch, pathway and sight triangles); in the side setbacks (compromised by decking, bin storage and narrow shape); in the driveway (gun barrel with only a narrow planting strip); and in the rear (with a drainage easement to the rear noting the Schedule 3 calls for private open space unencumbered by easements).

1. Council refers to a decision of the Tribunal[[3]](#footnote-4) where a proposal for 7 dwellings in a RGZ3 was rejected for reasons that included concerns about limited opportunities in side setbacks for planting to contribute to the perception of an open garden setting.
2. The applicant submits the proposal responds appropriately to the design objectives of RGZ3, meets the varied clause 55 standards in RGZ3 and will result in an articulated built form. The applicant says the amount of planting proposed will be a net gain for the site and there is sufficient opportunity for new planting in the context of clear support for increased development on the land.

### What does the Planning Scheme say?

1. The purpose of the RGZ, in addition to implementing policy, seeks, as relevant:

To provide housing at increased densities in buildings up to and including four storey buildings.

To encourage a diversity of housing types in locations offering good access to services and transport including activity centres and town centres.

To encourage a scale of development that provides a transition between areas of more intensive use and development and other residential areas.

To ensure residential development achieves design objectives specified in a schedule to this zone.

1. The design objectives of Schedule 3 to the RGZ are:

To facilitate housing growth in the form of apartment developments of a high quality design and finish.

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

To ensure that the height, scale and form of development respects any sensitive residential interfaces and minimises the appearance of visual bulk.

1. Decision guidelines in RGZ3 require consideration of whether the development contains elements of the ‘garden city’ character; provides appropriately for vehicle crossovers; includes significant breaks in building massing; minimises impact to neighbouring properties through suitable setbacks for planting of screening trees; and, whether the development uses robust materials that complement the neighbourhood.
2. The provisions of clause 55 apply, as varied by RGZ3. Maximum building height is 13.5 metres.
3. The Planning Policy Framework supports additional housing and increased diversity of housing on land that is well located for access to public transport, services and employment. There is emphasis on new housing responding to context and achieving a high standard of design.
4. The Municipal Strategic Statement[[4]](#footnote-5) (MSS) includes the land in an ‘Accessible Area’ within the Monash National Employment Cluster. In this area, housing growth is supported. The MSS objectives encourage a variety of housing types and sizes, seek new development to maintain and enhance the garden city character and support a high standard of architectural design and landscaping.
5. Under local policy,[[5]](#footnote-6) the review site is included in the Housing Growth Area – Clayton Activity Centre and Monash Employment Cluster where the preferred future character is:

The scale of new residential development will generally comprise larger footprint apartment development of a high-quality design and finish. Some infill town house and unit development will also occur. Where possible on larger sites, developments will be multi-level, and set in open gardens. Although setbacks from all boundaries will be less than is common in other parts of Monash, the developments will ensure the incorporation of well-maintained landscaping to address the garden city character, albeit in a more urban form.

#### Tribunal findings

1. There is no dispute that additional housing on the review site responds to the Planning Scheme policies that seek increased density of housing in locations that are well located for access to services, public transport and employment. It is uncontroversial that the proposal would contribute to the variety of housing types, thereby catering for changing household needs.
2. Assessing the proposed design against the design objectives of RGZ3 and other relevant provisions of the Planning Scheme, I am satisfied the response is acceptable. I say this for the following reasons.
3. The front setback at 4 metres, meets the varied street setback in RGZ3. It will be forward of existing nearby development, but this outcome is clearly supported in the varied standard. Importantly, the design with only one vehicle crossing across a 20.4 metre frontage maximises the opportunity for planting in the front setback, a relevant matter in the RGZ3 decision guidelines. I do not share Council’s criticism of the porch and pedestrian pathway to dwelling 1 as being intrusive into the front setback. Rather, I consider these elements make only minor reductions in landscaping opportunities whilst adding to the visual interest to the streetscape elevation.
4. The absence of a front fence combined with proposed planting of three trees capable of reaching 10 metres in height in the front setback will contribute to both an open and garden setting in accordance with the RGZ3 objective.
5. I find the streetscape presentation of the proposal, as shown in Figure 1, is articulated through the stepped setbacks above ground level to both front and side elevations, the varied roof lines and the feature gabled element at first floor level. I am satisfied this design avoids a ‘large block like structure’ dominating the streetscape.

A picture containing outdoor, grass, sky

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Figure 1: East elevation to the street Source: TP14 Revision E Jesse Ant Architects

1. The three level height will be greater than the adjoining single storey dwellings. Building height greater than existing development is anticipated in the purpose of the RGZ, in the desired future character for the area and in the 13.5 metre maximum specified in the zone provisions. Schedule 3 to the RGZ does not seek a scaling-down of height, except where land adjoins properties in the General Residential Zone (GRZ). The review site does not adjoin land in the GRZ. I find the three storey height entirely consistent with what is sought under the Planning Scheme.

Diagram

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Figure 2: Proposed streetscape elevation Source: TPO1 Revision E Jesse Ant Architects

1. I consider the setbacks from side boundaries that vary between levels, together with the ‘break’ in the extent of the upper level, will limit the appearance of visual bulk to side boundaries. Figure 2 above shows the separation between the proposal and adjoining single storey dwellings. At ground level, the setback to the north varies but is mostly a minimum of 3 metres which combined with the larger setbacks at upper levels will provide a sense of space to side boundaries. The ground level setbacks allow for the planting of a tree in the secluded private open space of dwellings 1, 2 and 3.
2. The first floor cantilevers over the ground floor for part of the southern elevation. This element does not extend substantially beyond the line of the ground level and I am satisfied it will add to articulation of the southern elevation rather than create unacceptable visual bulk.
3. I do not agree with Council’s criticisms of the driveway. The layout shows a slightly curvilinear alignment to the driveway with landscaping along the south side in sections with a 1 metre width. On the south side of the driveway there are curved landscape areas adjacent to dwellings 2 and 3 sufficient to plant a small tree and an area of open space at the termination of the driveway also sufficient to plant a small tree. In addition, two sections of driveway are to be patterned which will relieve the appearance and mark the dwelling entry to dwellings 2 and 3. These features combined will allow a positive contribution to the garden character sought for the area.

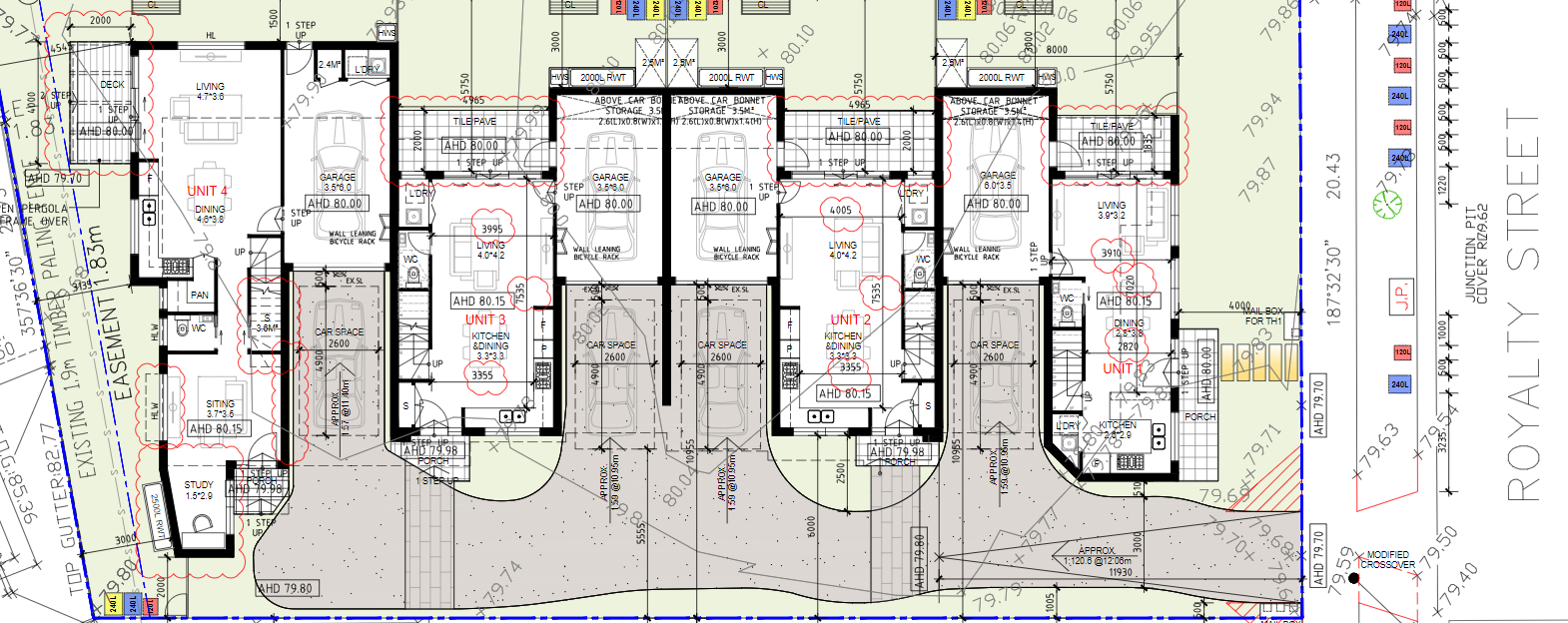


Figure 3: Ground floor layout Source: TP05 Revision E Jesse Ant Architects

1. The interface to the rear is with secluded private open space of a double storey dwelling at the rear of a multi-unit development at 5 Hourigan Avenue. Noting there are no habitable room windows in the adjoining dwelling, I am satisfied that the design to the rear interface is acceptable. Although three storeys, I consider the setbacks and external finishes avoid unreasonable visual bulk. These include a ground floor setback of a minimum of 3.1 metres increasing to at least 5.2 metres at the upper level combined with the side setbacks that increase with each level. The external finishes include face brickwork, light grey render and dark grey cladding. Taken together these features create a modulated built form.
2. The rear setback allows for planting. Although a 1.9 metre wide easement extends along the rear boundary, there is space outside the easement for planting of trees and there are some species that can appropriately be planted in easements. A permit condition that requires landscaping to the satisfaction of Council can ensure appropriate planting is provided.
3. Important to my findings on the design response, is that setbacks to the side and rear boundaries meet the varied standard that applies under RGZ3.[[6]](#footnote-7)
4. The development will appear different to nearby development in its current setting. That is to be expected on a site that is designated to facilitate housing growth and where larger and more intense housing form is anticipated. Importantly, the layout allows for landscaping that will contribute to the garden city character, albeit in the more urban form as referred to in the preferred future neighbourhood character for this area.

## Is the amenity for future residents acceptable?

1. Council submits the dwellings do not achieve acceptable internal amenity outcomes based on the following:

* Internal layout – given the 5 bedrooms and the potential number of occupants in each dwelling, the living, kitchen and dining areas are inadequate in terms of size, functionality and circulation space.
* Outlook – there is considerable reliance on screening along the northern and western elevations which will result in poor outlook, limited daylight and a sense of enclosure for residents. Retreat areas for dwellings 2 and 3 have no window.
* Safety – the entries for dwellings 2 and 3 are obscured behind dwelling 1 and the design of the tandem car spaces for these dwellings create secluded spaces with poor surveillance.
* Private open space – the space provided for dwellings 2 and 3 is inadequate for the potential number of occupants and will be subject to excessive shadow.

1. The applicant refutes Council submissions pointing out that clause 55 standards that relate to internal amenity are met, including the private open space standard varied under RGZ3. The applicant acknowledges that there is no daylight provided for the retreat areas but submits these spaces contribute to the amenity of the dwellings. The applicant submits the living/kitchen/dining areas are acceptable, noting there is no applicable standard that relates to room sizes.
2. Although submitted as unnecessary, the applicant said modifications to the layout could be undertaken that include:

* The retreats in dwellings 2 and 3 could be reduced in size and form a landing area at the top of the stairs. Alternatively, these areas could be joined to the study to provide a more useable area with outlook to a window.
* Bedroom 2 of dwelling 1 could be converted to an additional living area and joined to the retreat area.

#### Tribunal findings

1. The purpose of Clause 55 includes encouraging development to provide reasonable standards of amenity for future residents. There are objectives and standards in clause 55 that relate to onsite amenity and various policies support a high standard of design.
2. I find there are a number of design features that provide unacceptable amenity for future residents but consider these can be addressed by permit conditions that require alterations to the layout. There are some matters I find acceptable as proposed. I set out my findings on each element of concern.

##### Private open space

1. The private open space standard is varied in RGZ3 to require;

An area of 40 square metres, with one part of the private open space at the side or the rear of the dwelling or residential building with a minimum area of 35 square metres, a minimum width of 3 metres and convenient access from a living room.

1. I am satisfied that the private open space is adequate having regard to the following:

* Each dwelling has private open space that meets the varied standard.
* The secluded private open space for dwellings 1, 2 and 3 are located on the north side of the dwelling, an outcome sought in the standard. Although there will be some shadow to these spaces caused by the dwelling and boundary fence to the north, there will be useable areas with solar access at the equinox.
* The secluded private open space for dwelling 4 is located to the west with some aspect to the north. The shadow diagrams show there will be useable area with access to solar access at the equinox, noting the amount of secluded private open space at 75 square metres substantially exceeds the required 35 square metres for this dwelling.
* Although the private open space for each dwelling includes a clothes line, a storage shed and waste bins, this accords with the objective relating to private open space that refers to meeting service needs.

1. I acknowledge Council’s concerns about the private open space being insufficient for the needs of a five bedroom dwelling. However, in circumstances where the varied standard relating to private open space is met and there is no additional requirement based on bedroom or occupant numbers, this does not form a basis to reject the proposal.

#### Outlook

1. I agree with Council that the extent of screening to habitable room windows will result in poor outlook. All habitable room windows above ground level facing north and west[[7]](#footnote-8) are shown with obscure glazing to a height of 1.7 metres above finished floor level. This results in 7 bedrooms, 2 studies and a rumpus room having outlook only via a screened window.
2. I acknowledge the difficulties of avoiding this arrangement on narrow lots and that outlook from bedrooms is generally considered of less concern compared to a living room. However, I think it is important that future occupants are provided with some outlook and will require provision of fixed angled blade screening that limits downward views while allowing views out and upwards. This treatment will provide an acceptable level of amenity for future occupants and still protect privacy of adjoining properties. This matter can be addressed by permit condition together with a condition that requires such screens to be maintained.

##### Daylight and functional spaces

1. I acknowledge Council references to decision of the Tribunal[[8]](#footnote-9) where concern has been raised about the small size of living rooms. Although there is no standard for living room size in dwellings (unlike apartments),[[9]](#footnote-10) I nevertheless consider it is reasonable to have regard to the functionality and useability of internal spaces in consideration of amenity.
2. I agree with Council that the living/kitchen/dining areas for dwellings 1, 2 and 3 are narrow, serve multiple circulation functions with access to stairs, a toilet, a laundry, the garage and the outdoor space and provide limited space for the occupants of a five bedroom dwelling.
3. The retreat areas located at the top of the stairs on the first floor of dwellings 2 and 3 have no access to daylight. I find provision of these habitable spaces without a window is unacceptable.
4. I consider an acceptable level of amenity for these dwellings could be achieved with a second living area to be provided at first floor.
5. In the case of dwelling 1, this can occur by deleting bedroom 2 and joining that space with the retreat providing a usable second living space with good outlook to the street.
6. In the case of dwellings 2 and 3, a second living space can be provided by combining the study area with the retreat. In addition to increasing the amount of shared living space for the occupants, it will address my concern about lack of daylight to a habitable room.
7. The alterations I have referred to above can be achieved by permit condition. In the case of dwellings 2 and 3, a redesign of the layout of the bedrooms and bathrooms at first floor may be required. Provided the footprint of this level, as shown on the substituted plans, is not altered and windows facing north remain screened, this is an acceptable outcome.

#### Dwelling entry and safety

1. It is my view that the layout provides appropriately in respect of safety and dwelling entry having regard to the following design features.
2. The entry to dwelling 1 faces the street and is identifiable with no front fence obscuring its visibility. Together with windows at all three levels in the front elevation, this layout will provide for passive surveillance of, and connection to, the street.
3. The entry to dwelling 4 is located at the termination of the shared driveway together with a study window at ground level facing east toward the street. This layout allows the entry to be identifiable and provides for passive surveillance of the common driveway contributing to the sense of safety to future occupants.
4. The entries to dwellings 2 and 3 are flush with the southern elevation. There are, however, porch elements that project adjacent to the front doors and patterned paving across the driveway to the south of the doorways. These features will ensure the entries are apparent from within the common driveway. A narrow vertical window is located adjacent to each doorway allowing occupants visibility of the external space. I will require these windows to be of transparent glass to contribute to passive surveillance of the driveway.
5. I acknowledge Council’s safety concerns about the recessed spaces for the tandem car spaces. Subject to appropriate security lighting, which can be required by permit condition, and having regard to the extensive passive surveillance opportunities provided by multiple unscreened windows facing south to the driveway, I am satisfied the objective relating to safety is met.

## Are there unacceptable amenity impacts to adjoining properties?

1. Council’s concerns about amenity impacts relate to visual bulk created to adjoining residential interfaces. The statement of grounds criticises the three storey form to the rear and the potential for overlooking.
2. I have addressed the presentation of the proposal to side and rear boundaries in my assessment of the design response. In summary, I am satisfied that the setbacks, the articulation to elevations and the confined upper level will avoid unreasonable visual bulk when viewed from adjoining properties. In reaching that view, I have had regard to the support for increased intensity of built form in the RGZ3 provisions and the applicable policy.
3. Overlooking to the rear is limited through the upper level habitable room windows shown with fixed obscure glazing to a height of 1.7 metres above finished floor level. There is one west facing rumpus room window of dwelling 4 where it is unclear from the elevations what is proposed. Subject to a permit condition that addresses outlook from this window, I am satisfied that views to the secluded private open space to the west are limited. My findings on internal amenity mean that screening treatment to the windows will take the form of external louvres that direct views outward and upward.
4. Although not raised as a concern it is relevant to my support of the proposal that overlooking to the south and north is acceptably limited and there will be no unreasonable shadow impacts to adjoining properties.

## Is the car parking provided sufficient?

1. Council submits that the provision of a single car garage and tandem car space for each dwelling is not a workable response for 5 bedroom dwellings. It is put that the overall layout is ‘tight’ and does not promote convenient or safe use and will lead to increased on-street parking.
2. I find no reason to reject the proposal for reasons relating to car parking given:
   * The requirements for car parking[[10]](#footnote-11) specify two car spaces for dwellings with three or more bedrooms. The provision of two car spaces for each of the proposed dwellings meets this requirement. The Planning Scheme does not vary these requirements for dwellings with more bedrooms.
   * Tandem car parking arrangements are commonplace in residential development and specifically contemplated in the Planning Scheme.[[11]](#footnote-12)
   * The dimensions of the car spaces and adjacent driveway meet the specified standards in clause 52.06-9.
   * The Council traffic engineer, in referral comments, advised that all vehicles can enter and exit in a forward direction and raised no concerns about parking or access provision.

## Are the arrangements for waste management acceptable?

1. Council submits the proposed Waste Management Plan (WMP) which proposes individual bins for each dwelling will not cater for the likely waste generated by the number of occupants in 4 x 5 bedroom dwellings. Council is concerned that there will be overflow waste and the reliance on limited kerbside space for at least 12 bins will adversely impact local amenity.
2. The proposal shows space for bin storage in the rear yards for each dwelling with opportunity to wheel these to the driveway via a garage or gate. The 20 metre wide frontage of the lot, of which only 3 metres is to be set aside for vehicle access will allow ample space for bins to be placed on the nature strip for Council collection. A WMP accompanied the permit application and permit condition can be imposed to ensure its implementation.

## What conditions are appropriate?

1. Draft permit conditions circulated by Council were discussed at the hearing. Subject to implementing my findings, I have generally adopted those conditions.
2. There is a requirement in the permit conditions for provision of a landscape plan. A landscape plan dated July 2021 prepared by Zenith Concepts was presented at the hearing and I gave leave for Council to comment on that plan after the hearing. The comments provided raise a number of concerns about the species of planting proposed and other matters. I propose to retain the permit condition without reference to the Zenith Concept plan to ensure the landscape plan is to the satisfaction of Council.

**CONCLUSION**

1. For the reasons provided, I set aside the decision of Council and direct that a permit issue subject to conditions.

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| Cindy Wilson  **Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No: | TPA/51519 |
| Land: | 17 Royalty Street  CLAYTON VIC 3168 |

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| What the permit allows |
| The construction of four (4) triple storey dwellings in accordance with the endorsed plans |

## Conditions:

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 development plans prepared by Jesse Ant Architects (Revision E) dated 1 July 2021 but modified to show:
   1. Details of all recommendations for tree protection measures and construction techniques contained in the Arborist report by “Malloy Arboriculture Pty Ltd” dated 29 November 2019.
   2. A revised Waste Management Plan, as required by condition 9 of this permit, to include accommodation of projected waste generation rates.
   3. Screening to a height of 1.7 metres above finished floor level to habitable room windows which allow views of existing habitable room windows and secluded private open space within 9.0 metres. The screening must comprise fixed external louvres. Cross sectional diagrams to scale must be provided to show the angle of the louvres and how they will limit views into existing habitable room windows and secluded private open space to meet the objective of clause 55.04-6 of the Monash Planning Scheme.
   4. Alterations to the first floor of dwelling 1 to delete the internal southern wall and doorway to bedroom 2 and combine this space with the retreat to create a living room.
   5. Alterations to the first floor of dwellings 2 and 3 to provide a second living space that incorporates the retreat and the study in a manner that provides a window to that space. Other alterations to the first floor layout of these dwellings may be made provided the overall first floor footprint remains the same.
   6. The narrow windows adjacent to the entry doors to each dwelling noted as transparent glazing.
   7. The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at or behind the setback alignment of buildings on the site, or in compliance with Council’s “Guide to Electricity Supply Meter Boxes in Monash”.
   8. A revised Landscape Plan in accordance with condition 3 of this Permit and to incorporate the above required changes.
   9. A revised Sustainable Design Assessment in accordance with Condition 7 to incorporate all the above required changes.
2. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
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 show:
   1. 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;
   2. the location of any fencing internal to the site;
   3. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
   4. planting to soften the appearance of hard surface areas such as driveways and other paved areas;
   5. canopy trees / significant planting on adjoining properties within 3 metres of the site;
   6. the location of any retaining walls associated with the landscape treatment of the site;
   7. the location of the meter box in accordance with the requirements of condition 1 of this permit:
   8. details of all proposed surface finishes including pathways, accessways, patio or decked areas;
   9. the location of Tree Protection Zones and Tree Protection Fencing as outlined within the Arborist Report “Malloy Arboriculture Pty Ltd” dated 29 November 2019;
   10. provision for landscaping that does not exceed 900mm in height in the area comprising a corner splay 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; and
   11. landscaping and planting within all open areas of the site.

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

1. Before any development (including demolition) starts on the land, a tree protection fence must be erected around all trees located within or adjacent to any works area including the Council street trees and trees on adjacent land. The tree protection fences must remain in place until all construction is completed on the land, except with the prior written consent of the Responsible Authority.
2. 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.
3. 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.
4. 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:
   * 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.
   * Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
   * Document the means by which the appropriate target or performance is to be achieved.
   * Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
   * Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.

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.

1. Prior to the occupation of any of the dwellings approved under this permit, a report from the author of the endorsed Sustainable Design Assessment (or similarly qualified person or company) must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that (in relation to those relevant completed dwellings ready for occupation) all measures specified in the Sustainable Design Assessment have been implemented in accordance with the approved plan.
2. Concurrent with the endorsement of any plans, a Waste Management Plan for the collection and disposal of garbage and recyclables must be submitted to, and approved in writing by, the Responsible Authority. The approved Waste Management Plan must be implemented to the satisfaction of the Responsible Authority.
3. Low intensity / baffled lighting must be provided to ensure the tandem car spaces and accessway are adequately illuminated and that lighting must be designed to avoid unreasonable loss of amenity to the surrounding area, to the satisfaction of the Responsible Authority
4. The site must be drained to the satisfaction of the Responsible Authority.
5. 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 to the satisfaction of the Responsible Authority.
6. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Prior to commencement of works, any detention system or alternate system is to be approved by the Responsible Authority.
7. 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.
8. 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.
9. 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.
10. Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
11. 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.
12. Privacy screens as required in accordance with the endorsed plans must be installed prior to occupation of the building to the satisfaction of the Responsible Authority and maintained thereafter to the satisfaction of the Responsible Authority.
13. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
14. 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 has not started before two (2) years from the date of issue.
    * The development is not completed before four (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 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. The submissions of the parties, any supporting exhibits given at the hearing, and the statement 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. [↑](#footnote-ref-2)
2. By Order dated 23 August 2021. [↑](#footnote-ref-3)
3. *Yang v Monash CC* [2019] VCAT 1677 [↑](#footnote-ref-4)
4. At clause 21.04. [↑](#footnote-ref-5)
5. At clause 22.01-4. [↑](#footnote-ref-6)
6. Noting it is only the rear setback that is varied from the standard at clause 55.04-1. [↑](#footnote-ref-7)
7. Except one west facing rumpus room windows of dwelling 4. It is unclear from the elevations what is proposed for this window. I address this matter in addressing amenity impacts. [↑](#footnote-ref-8)
8. *570 Brandy’s Pty Ltd v Monash CC* [2020] VCAT 1472 and *Lu v Monash CC* [2018] VCAT 2007. [↑](#footnote-ref-9)
9. At clause 58.07-1 of the Planning Scheme. [↑](#footnote-ref-10)
10. At table 1 of clause 52.06-5. [↑](#footnote-ref-11)
11. At clause 52.06-9 design standard 2. [↑](#footnote-ref-12)