VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference No. P2424/2018  Permit Application no. TPA/49180 |
| CATCHWORDS | |
| Section 77 of the *Planning and Environment Act 1987*, Monash planning scheme, General Residential Zone Schedule 2, Student Accommodation, Neighbourhood character, Front setback, Amendment C125 Part 2, proposed General Residential Zone Schedule 6. | |

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| APPLICANT | Bruno Grossi Pty Ltd & Ors |
| responsible authority | Monash City Council |
| SUBJECT LAND | 17 Koonawarra Street, Clayton |
| WHERE HELD | Melbourne |
| BEFORE | Tracey Bilston-McGillen, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 17 June 2019 |
| DATE OF ORDER | 16 July 2019 |
| CITATION | Bruno Grossi Pty Ltd v Monash CC [2019] VCAT 975 |

# Order

1. Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

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| * Prepared by: | DCA Design |
| * Plans: | TP01, TP02, TP03, TP04, TP06, TP07, TP08, TP09 Rev B, May 2019  TP05 Rev A May 2019  Landscape Plan, Zenith Concepts, April 2019 |

1. In application P2424/2018 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/49180 no permit is granted.

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| **Tracey Bilston-McGillen**  **Member** |  |  |

# Appearances

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| For Bruno Grossi Pty Ltd & Ors | Ms Emma Peppler, Barrister instructed by Roger Yolland, Solicitor. She called the following witnesses:  Mr John Glossop, town planning consultant, Glossop Town Planning Pty Ltd.  Mr Steve Hunt, traffic engineer, ratio. |
| For Monash City Council | Ms Sally Moser, town planning consultant, Moser Planning Services Pty Ltd. |

# Information

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| Description of proposal | Construction of a two storey residential building to be used for student accommodation. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Zone and overlays | General Residential Zone Schedule 2 (**GRZ2**). |
| Permit requirements | Clause 32.08-2. A permit is required for a Section 2 use.  Clause 32.08-6. A permit is required to construct a building.  Clause 32.08-9. A permit is required to construct a building or carry out works for a use in Section 2 of clause 32.08-2. |
| Key scheme policies and provisions | Clauses 11, 15, 16, 21.01, 21.04, 22.05, 22.10, 32.08, 52.06 and 65. |
| Land description | The review site is located on the western side of Koonawarra Street, Clayton. The site has a frontage of 17.07 metres, a depth of 40.84 metres and an overall site area of 697 square metres.  The site is vacant. Surrounding development is residential comprising of modest single storey dwellings but with some redevelopment of sites for multi-dwelling developments and student accommodation. |
| Tribunal inspection | I inspected the site and surrounds. |

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

## What is this proceeding about?

1. Bruno Grossi Pty Ltd & Ors (**the applicant**) is seeking a review of Monash City Council’s (**Council**) decision to refuse to grant a planning permit for the construction and use of a two storey building for student accommodation at 17 Koonawarra Street, Clayton.
2. The site is several streets away from Monash University’s Clayton Campus and is an area identified by State planning policy as a National Employment and Innovation Cluster (**NEIC**).
3. Council acknowledged that the site is in a preferred location for student accommodation as it is within 1500 metres of Monash University. It was Council’s concern that the proposed student accommodation building form is not supported due to matters concerning the front setback, bulk and massing, landscaping opportunities, student facilities and car parking. Council refused the proposed development on the grounds that the proposal is inconsistent with policy at clauses 21.04, 22.01 and 22.10 as it fails to contribute positively to neighbourhood character, does not satisfy clause 55 having regard to neighbourhood character, site layout and building massing, private open space and detailed design. Largely Council’s concerns focussed on the impact of the built form on the character of the area.
4. The applicant contends that the proposed development is appropriate as it represents a significant net community benefit, providing much needed student accommodation within walking distance of Monash University. The applicant further submitted that the proposed built form will fit comfortably within the surrounding existing and future neighbourhood character.
5. I agree with both parties that there is strategic support for student accommodation in this location. There is also much to like about the proposed development. It offers student accommodation in a location where it is clearly encouraged by policy. It proposes a form with a hipped roof and materials so as to appear as a domestic building form. It offers a good level of internal amenity complying with Council’s student accommodation policy in terms of size (despite some requested internal layout changes by Council), it offers a common kitchen and living area and offers a generous level of communal open space to the rear. I also have no issue with the car spaces allowed for the proposed number of units, given the proximity to Monash University and the provision for bicycle parking.
6. This case essentially is about the front setback, which is proposed at 4 metres when the current planning framework calls for 7.6 metres. I need to decide if the proposed 4 metre setback is acceptable. I am persuaded by Council that it is unacceptable at this current time and therefore a permit should not issue. My reasons for this decision follow.

### Amendment C125

1. Central to this case is the status of Amendment C125 Part 2. I was referred to several decisions[[2]](#footnote-2) that have addressed the history and status of Amendment C125. In summary, Amendment C125 seeks to modify the existing schedules and introduce new schedules to the General Residential Zone (**GRZ**) and Neighbourhood Residential Zone (**NRZ**). The Minister for Planning split the amendment, approving Part 1 but requesting that further strategic work be undertaken regarding Part 2.
2. Relevant to this site, the Minister did not approve Part 2 which included the introduction of a new Schedule 6 to the GRZ. I was provided with a copy of the proposed Schedule 6 to clause 32.08 General Residential Zone – Monash National Employment and Innovation Cluster and Clayton Activity Centre – Housing Diversity Area. This schedule varies ResCode Standards A3 and B6, setting the requirement of a minimum street setback of 4 metres (a reduction from the current 7.6 metre nominated setback provision).
3. Mr Glossop also provided an update on what he believes is the current status of Amendment C125 Part 2. Council at its meeting on 26 February 2019, resolved to request the approval of Amendment C125 – Part 2 (with the exclusion of the Accessible Areas and Boulevards). It is noteworthy that the Council continues to support the reduction in the front setback from 7.6 metres to 4 metres. I understand (and it was not disputed by any party) that the proposed GRZ6 put to the Minister for approval, maintains the front setback at 4 metres in the current request for approval.
4. The question is what weight I give Amendment C125 Part 2 and in particular the provision in the proposed GRZ6 varying the front setback. In *IPIA Pty Ltd v Monash CC* Member Taranto observed:

[40] This leaves considerable uncertainty about the likelihood of Amendment C125 [(Part 2)](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/paea1987254/s2.html) being gazetted in the form adopted by the Council.

[41] In turn, this reduces the weight I can give to the GRZ6, particularly the varied Clause 55 numeric standards in GRZ6 and the statement of preferred character at Clause 22.01.

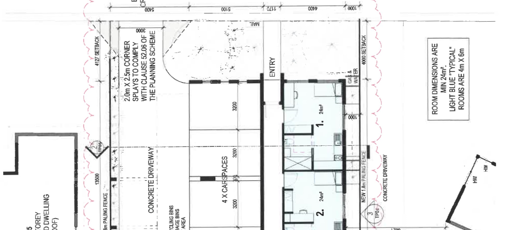
[42] I add that on my reading of the latter, I agree with the Panel’s findings that greater clarity of the Council’s aspirations for this part of the NEIC is necessary. The issue has a sharper focus in the context of the proposed DDO13 whose demise leaves an even larger gap in the preferred residential development outcomes sought for this part of the NEIC.

[43] To summarise, my assessment of this proposal’s acceptability commences with the provisions of the GRZ2 and the existing policy framework. The latter includes the site’s designation as an NEIC which makes it suited to more intensive forms of residential development. In the circumstances, I find that it is appropriate to apply the varied Clause 55 numeric provisions under the GRZ2 with a greater degree of flexibility than I might otherwise, being mindful that these provisions rather than those under the proposed GRZ6 are the starting point for my assessment. I similarly adopt a more flexible application of the Residential Development and Character Policy at clause 22.01 including the preferred character outcomes sought for this area.

1. I agree with the approach of Member Taranto in the decision above. I adopt the approach noting that I could apply the provisions under the GRZ2 with a greater degree of flexibility, rather than the starting point being the proposed GRZ6 provisions. I find the proposed variation to the front setback in the proposed GRZ6 is not the starting point. Whilst Amendment C125 Part 2 might be ‘seriously entertained’, its final format is yet to be determined.

### The front setback

1. It is proposed to construct a two storey student accommodation building with a front setback to Koonawarra Street of 4 metres to the building line. Two nib walls encroach into this setback. The adjoining property to the north is setback 7.6 metres and to the south a minimum of 9 metres (this property is angled to the street, the 9 metre distance is the closest point to the street). The applicant relied on the proposed 4 metre front setback variation in the proposed GRZ6 to justify the proposed reduced setback.



DCA Design plan TP01 Rev B.

1. On my site inspection, I observed a street that is undergoing change. Whilst there are many existing modest single storey dwellings, there is an emergence of student accommodation buildings. I note that a few appear to be in the form of a single dwelling modified to provide student accommodation. I further observed that the front setbacks in the Koonawarra streetscape, particularly on the western side of the street are fairly consistent, due to the lack of change that has occurred in this section of the street. There are recent Tribunal decisions that have made slight variations to the street setback, but these are in the order of 6.7 metres instead of 7.6 metres. I find the requested variation to 4 metres to be too much of a departure from the existing planning scheme controls. Mr Glossop put in his evidence that I should take a ‘leap of faith’ and approve the proposed 4 metre front setback. This is based on the fact that the proposed GRZ6 permits a 4 metre setback, Council has prepared and advocated this distance, the proposed Amendment C125 Part 2 amendment has been submitted for approval with this setback and the area is undergoing a degree of change.
2. I agree, in part, with Mr Glossop. I agree that there is a degree of change starting to occur in the street and that the amendment has been submitted for approval. However, whilst the amendment is ‘seriously entertained’, the final detail of the amendment has not been approved. I find that a 4 metre setback as proposed is a significant departure from the existing 7.6 metre setback required. I may have considered a slight variation to the setback, but 4 metres is asking too much. The adjoining properties are setback 7.6 metres to 9 metres. A building setback of 4 metres will sit significantly forward of both properties and will appear as a jarring and discordant built form element in the streetscape. The proposed 4 metre setback would have no visual relationship to the adjoining properties or the Koonawarra Street streetscape.
3. If I assess the proposed building against the existing controls within the planning scheme, I find it fails to achieve current policies. Clause 22.01 Building setbacks establishes policies including:

* Buildings be set back from street frontages in context with the surrounding environment and to maintain open and spacious streetscapes.
* Building design reflect the spacing and rhythm of existing streetscapes.
* Development be set back from street frontages to visually unify diverse types of buildings and to enhance the quality of residential areas.

1. Having regard to the above, I find that the front setback at 4 metres would fail to maintain an open and spacious streetscape, fails to respect the spacing and rhythm of existing streetscapes and fails to visually unify diverse types of buildings and enhance the quality of the residential area. I agree that a front setback at 4 metres is an adequate area to provide for landscaping, but that is not the only guiding policy.
2. I am persuaded by Council that to approve a 4 metre front setback, pre-empts the outcome of the amendment process. It is too significant a departure for me to approve, at this stage of the amendment process.
3. Council was also concerned that the building lacked articulation, given there was little variation in the setback at ground level and then again at first floor level. I share Council’s concern. I find that if the building was setback further such as the 7.6 metres, the impact of the built form and lack of articulation may be acceptable to the streetscape. But to have a building set back 4 metres from Koonawarra Street at ground level and 5 metres at first floor level with little articulation (other than a slight recess to the hallway at first floor) adds to the visual impact of the building to Koonawarra Street. The building will appear as an imposing element in a streetscape that, whilst earmarked for change, still remains relatively consistent in terms of the front setback.

## Conclusion

1. A number of other issues were also raised including the provision of car parking spaces and the lack of articulation to the side elevations. As I stated earlier, I would not have refused the proposal on the grounds of lack of car parking based on the evidence of Mr Hunt and given that four spaces are provided, and the site is within walking distance to Monash University. As to the side setback and lack of articulation, student accommodation buildings are a different form of building to a house. If this was the only issue of concern before me, I would not have refused the development because of the side setback. As it is proposed, the side setback provides an area for landscaping and private open space and has limited impact on the amenity of the adjoining properties.
2. The opportunity to increase the front setback was broadly discussed during the hearing. I have considered if it is possible to require an increase in the front setback, but this would have a big impact on the built form, the number of student accommodation units and car spaces. An increase in the front setback to ‘more than four metres’ requires a review of the design and level of accommodation as a whole.
3. For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

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| **Tracey Bilston-McGillen**  **Member** |  |  |

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. [↑](#footnote-ref-1)
2. *Kong v Monash CC* (corrected) [2018] VCAT 1462, *IPIA Pty Ltd v Monash CC* [2018] VCAT 1290, *Hui Investments Pty Ltd v Monash CC* [2017] VCAT 842. [↑](#footnote-ref-2)