VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P1447/2019 |

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| APPLICANT | Nan Xin Investment Browns Road Pty Ltd |
| responsible authority | Monash City Council |
| SUBJECT LAND | 29 Browns Road, Clayton |
| WHERE HELD | Melbourne |
| BEFORE | Rachel Naylor, Senior Member |
| HEARING TYPE | No hearing |
| DATE OF ORDER | 5 December 2019 |

# Order

### Consent and Remittal to amend development plan

1. By consent, the failure of the Responsible Authority to make a decision within a reasonable time to amend a development plan pursuant to the Development Plan Overlay Schedule 5 of the Monash Planning Scheme is set aside. Pursuant to section 52(1)(d) of the *Victorian Civil and Administrative Tribunal Act 1998*, the matter is remitted to the Responsible Authority for re-consideration having regard to:
	1. The agreement reached between the Responsible Authority and the Applicant received by VCAT by email on 29 November 2019 that the amended Development Plan (as shown in Appendix 2 of the consent order) is approved pursuant to the Development Plan Overlay Schedule 5 of the Monash Planning Scheme.
	2. The Council resolution at its meeting of 26 November 2019 to support the proposed amendment to the Development Plan and allow a reduction in the prescribed visitor car parking requirement.

### Hearing vacated

1. The hearing scheduled at **10:00am on 28 January 2020** is vacated. No attendance is required.

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| **Rachel Naylor****Senior Member** |  |  |

# Reasons

1. This is an application by Nan Xin Investment Browns Road Pty Ltd for a review of Monash City Council’s failure to make a decision within a reasonable time to amend a development plan for 29 Browns Road Clayton pursuant to the Development Plan Overlay Schedule 5 of the Monash Planning Scheme.
2. By email dated 29 November 2019, the parties submitted a request to the Tribunal for a consent order directing that the amended development plan as shown in Appendix 2 (listing the changes required) be approved as a development plan pursuant to the Development Plan Overlay Schedule 5 at clause 43.04 of the Monash Planning Scheme.
3. In the circumstances, it is appropriate that the Responsible Authority’s failure to make a decision be set aside. The matter is remitted for re-consideration by the Responsible Authority in accordance with the directions of the Tribunal.
4. This is the final order in this matter. The remittal of this matter to the Responsible Authority now means that it is up to the Responsible Authority to give effect to its Council resolution on this matter having regard to the agreement reached with the Applicant. In other words, the Responsible Authority can now determine to approve the amendment of the development plan as agreed to with the Applicant.

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| **Rachel Naylor****Senior Member** |  |  |