

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P685/2022  
PERMIT APPLICATION NO.TPA/53246

### CATCHWORDS

Site in the Monash National Employment Cluster; Housing Diversity Area; Neighbourhood character; Internal amenity; Landscaping.

<b>APPLICANT</b>	Yan Wang
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>SUBJECT LAND</b>	16 Lillian Street CLAYTON VIC 3168
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	5 September 2022
<b>DATE OF ORDER</b>	21 September 2022
<b>CITATION</b>	Wang v Monash CC [2022] VCAT 1085

### ORDER

- Pursuant to 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:

Prepared by:	Archmap
Drawing numbers:	(All Revision C) TP05.01, TP05.02, TP05.03, TP05.04, TP06.01, TP08.01, TP09.01, TP10.01, TP10.02
Dated:	12 July 2022
Landscape Plan prepared by:	Zenith Concepts Pty Ltd
Dated:	July 2022 (Revision 2)
- In application P685/2022 the decision of the responsible authority is set aside.
- In planning permit application TPA/53246 a permit is granted and directed to be issued for the land at 16 Lillian Street Clayton in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

  - Construction of two or more dwellings



K Birtwistle  
Member

**APPEARANCES**

For applicant

Mr L Rigoni, town planner of Terrain  
Consulting

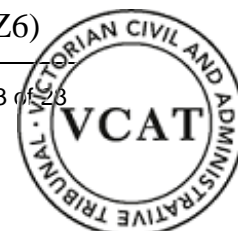
For responsible authority

Ms A Kellock, town planner of Kellock  
Planning Pty Ltd



## INFORMATION

Description of proposal	<p>Construction of eight dwellings in three separate buildings, with a gap of approximately 3.2 metres provided between each building. The front and rear buildings each contain three dwellings with the central building containing two dwellings.</p> <p>Vehicle access to all dwellings is provided via a shared driveway that runs along the western side of the site. The front two building modules are three storey and the rear building module is two storey.</p> <p>Each dwelling is provided with two car spaces in a double garage. Pedestrian access to the front dwelling is provided from Lillian Street via a pedestrian path, with pedestrian access to the rear seven dwellings provided from the shared driveway.</p> <p>Dwelling 1 is provided with a balcony that faces the street and the remaining six balconies all face west and have areas of between 10.1 to 10.2 square metres.</p> <p>Dwelling 1 is set back 4 metres from the front boundary and Dwelling 8 is set back a minimum of 4 metres from the rear boundary.</p> <p>The proposal has a site coverage of 49.7%, a permeable area of 36.1% and a garden area of 35%. The buildings have a maximum height of approximately 9.6 metres (west elevation), are of a contemporary style, with wall materials including brick, cement cladding, rendered cladding and render and timber look cladding. The proposed roof form is flat.</p> <p>A 900mm high blade fence is proposed across the site frontage and along the eastern side of the driveway towards the front of the land.</p>
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 (GRZ6)



Permit requirements	Clause 32.08-6 – Construction of two or more dwellings on a lot
Land description	<p>The site is located on the south side of Lillian Street approximately 50 metres west of its intersection with Madeleine Road, Clayton. It is irregular in shape, with an angled rear boundary, a frontage width of 15.2 metres and a rear boundary width of 18.6 metres. Its eastern and western side boundaries have lengths of 89.2 and 78.5 metres respectively. The overall site area is approximately 1,277 square metres. It is relatively flat, with an overall maximum fall of less than one metre from the front to the rear.</p> <p>To the north, at No. 29 Lillian Street, is a two dwelling development in a tandem configuration. The front dwelling is single storey and the rear is two storey.</p> <p>To the east the site abuts the rear yards of a number of properties that front Madeleine Road. To the west, at No. 14 Lillian Street, are two single storey dwellings in a tandem configuration. To the rear there are three properties fronting Carinish Road.</p> <p>The original housing in the area comprises largely single storey detached dwellings constructed of brick or weatherboard with pitched tiled roofs, however in the immediate vicinity there is a relatively high degree of redevelopment, with newer housing comprising largely dual occupancy and multi-unit developments predominantly two storey in scale. There is also three storey development in the immediate vicinity of the site including at No. 3-5 Lillian Street<sup>1</sup> and No. 31 Colonel Street<sup>2</sup> (corner Madeleine Street). A planning permit has also been issued for a three storey development at 81-83 Madeleine Road, approximately 15 metres north of Lillian Street.</p>

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<sup>1</sup> Issued at the direction of the Tribunal in *Jarmien Development Pty Ltd v Monash CC* [2018] VCAT 1076

<sup>2</sup> Also issued at the direction of the Tribunal in an unreported decision



Tribunal inspection

Unaccompanied subsequent to the hearing



## REASONS<sup>3</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 Yan Wang (the applicant) proposes to develop eight dwellings at 16 Lillian Street, Clayton. In May 2022, Monash City Council (the Council) determined to refuse to grant a planning permit for the proposed development. The permit applicant has requested the Tribunal to review Council's decision.
- 2 Council refused the proposal on the following grounds:
  - The proposal is inconsistent with the Residential Development Policy at Clauses 21.04 and 22.01 of the Monash Planning Scheme as it fails to achieve architectural and urban design outcomes that positively contribute to the neighbourhood character having particular regard to the desired future character for the Monash National Employment Cluster and Clayton Activity Centre – Housing Diversity Area.
  - The proposal does not adequately satisfy the objectives and design standards of Clause 55 of the Monash Planning Scheme with regard to neighbourhood character, site layout and building massing, open space, amenity, landscaping and detailed design.
  - The proposal is contrary to the development outcomes sought under the Clayton Precinct Plan for Precinct 3: Surrounding Residential.
  - The proposed development would adversely affect the neighbourhood character of the area.
  - The proposed development is considered to be an overdevelopment of the site.
  - The proposed development will have a detrimental impact on future development of the area and may result in an undesirable cumulative impact.
  - The proposed development is considered to be a poor design outcome for the site.
- 3 Prior to the commencement of the hearing, the applicant circulated amended plans in accordance with the Tribunal Practice Note PNPE9. Council acknowledges that the amended plans contain a number of minor improvements from those that it considered when it refused the application. The changes are however insufficient to resolve any of its concerns with the development. It says:

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<sup>3</sup> The submissions of the parties, any supporting exhibits provided to 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.

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- The decreased setbacks of parts of the second floor from side boundaries will increase visual bulk impacts on neighbouring properties.
  - The proposal results in a poor sense of address for the rear seven dwellings and one that does not promote pedestrian safety.
  - The overhang of the second level over the six first floor west facing balconies result in amenity implications.
- 4 There being no objection, I allowed the amended plans to be substituted and these now form those on which my decision is reached.
  - 5 Statements of Grounds (SOGs) were received from nearby residents, however as they elected not to appear at the hearing, they are not parties to the proceeding. I have considered their grounds in reaching my decision.
  - 6 The applicant says the proposal achieves the desired balance between the policies of residential amenity and neighbourhood character, and therefore should be supported.
  - 7 No party disputes, and I agree, that the site is located within an area and a streetscape where medium density infill housing is evident and could be accommodated. The Planning Scheme also supports increased built form change in this area.
  - 8 I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions presented with regard to the applicable policies and provisions of the Monash Planning Scheme, I have decided to set aside the decision of the responsible authority and direct that a permit be granted.
  - 9 My detailed reasons follow.

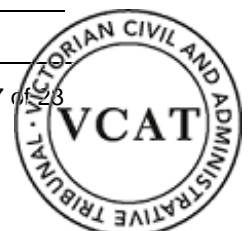
## BACKGROUND

- 10 The Tribunal has considered a previous planning application for the site, which proposed the construction of three two storey buildings to be used for student accommodation in *Kong v Monash CC* [2015]<sup>4</sup> (Kong). In that matter, the Tribunal affirmed Council's decision and directed that no planning permit issue.
- 11 Paragraphs 31 and 32 of the VCAT order provides a useful summary of the Tribunal's key findings. They state as follows:

I acknowledge the positive aspects of the proposal many of which were well put by the applicant and agree that these must be considered in making a decision. However in balancing the wide range of factors that must be considered I find the failure of the design response to provide acceptable dwelling entry and internal amenity is determinative and justifies refusal of the proposal. These are matters

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<sup>4</sup> VCAT 1782



that cannot be addressed without significant implications for the layout and consequential potential impacts on third parties...

- 12 The parties agree that the matter is not a repeat appeal as it is for the construction of dwellings as distinct to student accommodation.
- 13 Relevantly, the planning policy context has also changed from the time of the Tribunal's decision in *Kong*. Planning Scheme Amendment C125 (Part 2) was gazetted on 14 November 2019 which updated the Local Planning Policy Framework for residential development to reflect the objectives, directions and actions of the Monash Housing Strategy 2014 and introduced new schedules to the General Residential Zone. As a result of this amendment, the site is now located within GRZ6 (previously the land was within the GRZ2) which reflects the site's inclusion within the Monash Employment and Innovation Cluster (MEIC) and Clayton Activity Centre.

### RELEVANT PLANNING FRAMEWORK

- 14 GRZ6 applies to land described as the "Monash National Employment and Innovation Cluster and Clayton Activity Centre". Clause 1.0 of Schedule 6 to the General Residential Zone sets out the following neighbourhood character objectives:
  - To facilitate housing diversity in the form of units, townhouses and apartment developments of high quality design and finish.
  - To provide an interface between the Clayton Activity Centre, the Monash Employment and Innovation Cluster, the housing growth area and the lower scale surrounding garden city suburban areas.
  - To encourage development that respects sensitive residential interfaces and minimises building mass and visual bulk in the streetscape through landscaping in the front setback and breaks and recesses in the built form.
  - To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.
  - To ensure developments are constructed within an open garden setting through the retention and planting of vegetation, including canopy trees.
- 15 Schedule 6 varies a number of Clause 55 requirements including (as relevant):
  - Standard B6 Street setbacks by requiring walls of buildings to be set back at least 4 metres from the front street. Side street setbacks in accordance with standard B6 continue to apply, except where the site is on a corner.





- Standard B13 Landscaping by requiring new development provide or retain at least one canopy tree (with a mature height at least equal to the maximum building height of the new development), plus at least one canopy tree (a mature height at least equal to the maximum building height of the new development) per 5 metres of site width, use a mixture of vegetation including indigenous species; provide vegetation in the front, side and rear setbacks; and vegetation on both sides of accessways.
  - Standard B17 Side and rear setbacks by requiring a new wall not on or within 200 millimetres of a rear boundary should be set back at least 4 metres. Side setback requirements in accordance with standard B17 continue to apply.
  - Standard 28 Private Open Space by requiring a dwelling should have private open space consisting of an area of 50 square metres, with one part of the POS to consist of SPOS at the side or the rear of the dwelling with a minimum area of 35 square metres, a minimum dimension of 5 metres and convenient access from a living room; or a balcony or roof-top area of 10 square metres with a minimum width of 2 metres and convenient access from a living room.
  - Standard B32 Front fence height by requiring a front fence within 3 metres of a street not exceed 0.9 metres in height.
- 16 Schedule 6 to the zone provides that a building used as a dwelling or residential building must not exceed a height of 11.5 metres and three storeys.
- 17 Clause 7.0 of Schedule 6 contains the following decision guidelines, to be considered in addition to those specified in Clause 32.08 and elsewhere in the scheme, as appropriate:
- Whether the development provides an appropriate transition to built form on adjoining sites.
  - The robustness of proposed materials and finishes.
  - The impact of the shape and dimensions of the lot on the ability of the development to meet any requirements of this schedule.
  - The location and number of vehicle crossovers.
  - The impact of the development on nature strips and street trees.
  - The location, quantity and species of vegetation provided.
- 18 Settlement policies for metropolitan Melbourne describe the Monash National Employment and Innovation Cluster (MNEIC) as a place of state

significance and a focus for investment and growth<sup>5</sup> including new housing<sup>6</sup>.

- 19 The residential development Framework Plan at clause 21.04-1, identifies that the review site sits within ‘Category 2’ (Accessible Area) and ‘Category 3’ (Residential Land in the MNEIC).
- 20 In terms of housing growth, Clause 21.04-3 identifies that the MNEIC is an area envisaged to ‘support substantial residential growth ... to provide housing closer to where people work and study’. Directing housing growth to the MNEIC and other preferred locations such as its Activity centres supports the objective to preserve the valued ‘garden city’ aspirations<sup>7</sup> for areas where a lesser degree of change is sought.
- 21 The site is located<sup>8</sup> within the “Monash National Employment Cluster and Clayton Activity Centre – Housing Diversity Area”, and the preferred future character statement for this area is as follows:

The Clayton Activity Centre and the cluster more broadly are expected to experience major redevelopment, as one of the key areas for employment growth within Melbourne. As such, the core of the activity centre and the cluster are anticipated to accommodate growth and more diverse housing needs.

New housing will generally comprise multi dwelling developments such as units and, where appropriate, low rise apartments. Front and rear setbacks will be less than those preferred in the garden city areas, however will still provide the opportunity for landscaping.

Landscaping and open space within developments will remain an important feature for this character area.

Canopy trees within developments and separation between buildings will provide visual and environmental amenity for occupants and the residents of existing dwellings. New developments will be designed and constructed to a high standard, ensuring they provide a positive architectural impact.

- 22 On 28 January 2020, Council adopted the Clayton Activity Centre Precinct Plan (Tract Consultants, dated January 2020)<sup>9</sup>. The purpose of the plan is:

The Clayton Activity Centre Precinct Plan provides a clear framework outlining where and how this growth and change should occur.

Part of the plan is a transformative and long term Vision, which articulates how the Activity Centre should look, feel and function into the future. The Precinct Plan makes recommendations for future land uses in the centre including retail, commercial and residential uses. It

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<sup>5</sup> At Clause 11.01-1R

<sup>6</sup> At Clause 16.01-1R

<sup>7</sup> For example at Clauses 21.01-1

<sup>8</sup> At Clause 22.01

<sup>9</sup> Section 60(1A)(g) of the *Planning and Environment Act 1987* provides that before deciding on an application the responsible authority (and, upon review, this Tribunal), if the circumstances appear to require, may consider a strategic plan which has been adopted by the municipal council.



also sets out preferred building heights, built form character and public realm improvements, along with transport improvements including walking, cycling, public transport and motor vehicle networks.

23 The review site is located within the Precinct Plan boundary within Precinct 3 (Surrounding Residential), in an area identified for residential intensification. At Figure 10 of the Precinct Plan, the Clayton Activity Centre Built Form Plan reveals that the site is located within an area designated for future preferred building heights of between three to five storeys (10-16 metres), with land to the rear designated with a preferred building height of six storeys (19-22 metres).

24 Precinct 3 overview in the Plan states:

Low scale apartment buildings and townhouses with landscaped front gardens sit comfortably next to detached dwellings and define a high quality and contemporary character for the precinct.

25 The Plan provides a number of development requirements including:

- Landscaped front setbacks of 4 metres landscape setback for development up to 9.9 metres in height and 3 metres additional upper level setback for development above 9.9 metres in height.
- Rear setbacks of 3 metres for development up to 9.9 metres in height, plus 1 metre additional setback for every metre of height over 9.9 metres up to 16.5 metres.
- Side setbacks of 1 metre setback, plus 0.3 metres for every metre of height over 3.6 metres up to 9.9 metres, plus 1 metre for every metre of height over 9.9 metres, up to 16.5 metres.
- Building heights should not exceed:
  - three storeys for lots greater than 14 metres in width and less than 20 metres in width.
  - four storeys (13.2 metres) for lots greater than 20 metres in width and less than 30 metres in width.
  - Five to six storeys (16.5 metres – 19.8 metres) for lots 30 metres in width or greater.

## **IS THE PROPOSAL CONSISTENT WITH THE PREFERRED NEIGHBOURHOOD CHARACTER?**

### **Summary of parties' positions**

26 Council acknowledges that this is an area in which housing growth and change is expected. However, it says the proposal's response in neighbourhood character terms is not acceptable in the streetscape and in relation to its back yard setting by way of visual bulk. It agrees that the



proposal satisfies the varied GRZ6 standards of Clause 55 and that the building height does not exceed the mandatory maximum expressed in the zone. However, it says that the proposal fails to provide an acceptable design response having regard to the site context, the preferred character statement and the objectives of clauses 21.04 and 22.01 as the development:

- presents as prominent and dominant when viewed from the streetscape and surrounding properties due to a combination of factors including its elongated building form, limited side setbacks, overhanging first and second floors along the western elevation, minimal upper floor setbacks and minimal articulation of side walls.
- fails to mitigate visual bulk impacts as landscaping opportunities are limited along side boundaries and there are insufficient breaks and recesses in the built form.
- will not make a positive contribution to the Lillian Street streetscape, where existing multi-unit developments respond to the original traditional housing with recessed first floors and pitched roof forms.
- has ground floors dominated by garages, which provides poor activation through the site.
- has excessive hard paving, limiting opportunities for landscape planting.
- presents an elongated form with minimal separation, overhanging first and second floors, extensive window and balcony screening treatment and repetitive poorly articulated elevations.
- requires extensive screening to balconies and windows and provides a poor level of internal amenity.

27 In rebuttal, the applicant says:

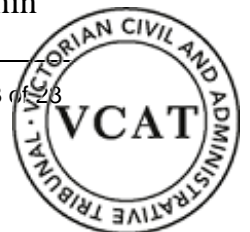
- the site is located within an area where a greater level of housing change is anticipated when compared to the ‘Garden City Suburbs’ area which accounts for the majority of the municipality.
- the three storey built form responds to an evolving neighbourhood character that comprises of recent three storey developments at No. 3-5 Lillian Street, No. 31 Colonel Street and a recently approved development at No. 81-83 Madeleine Road.
- the proposed development incorporates a minimum 4 metre front setback that meets the variation to Standard B6 of Clause 55.03-1 which will enable sufficient landscaping to be introduced to contribute to the landscape character of the neighbourhood.
- the presentation of garages as viewed from the street is avoided as the proposed garages each face the internal accessway.



- the proposal respects the existing spacing and rhythm of dwellings by avoiding boundary wall construction.
- the extent of hard paving within the front setback is minimised as it is only proposed to construct one accessway.
- the proposed shared pedestrian and vehicle accessway has a length that is consistent with the neighbourhood character that often comprises of medium density development in a tandem arrangement and vehicle access via a shared accessway.

#### Tribunal findings with respect to character

- 28 Achievement of housing intensification objectives will, by necessity, result in a character change for this area. Council’s strategic work in the development of Amendment C125, the rezoning of the land to GRZ6 (with its varied Clause 55 Standards) and the preparation of the Clayton Activity Centre Precinct Plan (the Precinct Plan) all aim to guide a new *preferred* housing change outcome for this area.
- 29 I find that the strategic directions for housing and growth as expressed in the Planning Scheme and by reference to the adopted Precinct Plan are to be given greater weight than those requiring respect for *existing* neighbourhood character. It is clear from both the existing physical context I observed during my inspection and the current planning and policy framework, that this is an area undergoing considerable change. While original housing stock is relatively modest in scale, it is inevitable that this will be replaced with more intense forms of housing. This is reflected in Council’s planning policy aspirations which seeks “more diverse housing”, and “multi dwelling developments such as units and, where appropriate, low rise apartments”.
- 30 The development of the Precinct Plan (whilst not yet the subject of a Planning Scheme amendment process) gives further encouragement to more intensive development, and the first generation of redevelopment (being generally two or three dwelling re-developments evident in the immediate area) are likely to be superceded by a second generation of redevelopment in the form of apartment or three to five storey buildings as sought by the Precinct Plan.
- 31 I give some weight to the strategic direction expressed in the Precinct Plan, as does Council, who rely on it as one ground of its refusal. While it has not been the subject of a Planning Scheme Amendment, I consider it is a relevant document that expresses clear policy aspirations for built form change.
- 32 With respect to the preferred character statement at clause 22.01, this acknowledges that landscaping and open space within developments will remain an important feature for this area. Further, that canopy trees within developments and separation between buildings will provide visual and



environmental amenity for occupants and the residents of existing dwellings.

- 33 Council's character criticisms partly relate to the space available for landscape planting. I do not share their concerns. I find that the proposed landscape response (as shown on the Landscape Plan) is broadly acceptable in terms of its contribution to the preferred neighbourhood character and in relation to the varied Standard B13 Landscaping Objective at Clause 55.03-8.
- 34 I say this firstly because the degree of housing intensification supported by the planning scheme must temper the overall garden city aspirations sought more broadly by the planning scheme. In other words, more intensive built form will be complemented by an appropriate degree of landscaping, which is likely to be less than for other areas in which a lesser degree of change is supported.
- 35 Secondly, the proposal satisfies the quantum of landscape space sought in the GRZ6. In reaching this finding, I rely on the GRZ6 provisions which requires:
- minimum front and rear building setbacks of 4 metres to provide space to accommodate landscaping.
- 36 Thirdly, with respect to landscaping provision, the GRZ6 seeks:
- at least one canopy tree (with a mature height at least equal to the maximum building height of the new development), plus at least one canopy tree (a mature height at least equal to the maximum building height of the new development) per 5 metres of site width.
  - the use of a mixture of vegetation including indigenous species.
- 37 The Landscape Plan which forms part of the application details the provision of vegetation in the front, side and rear setbacks and along both sides of the accessway comprising:
- two Water Gums within the front setback (mature height and spread of 8 metres and 4 metres).
  - four Burgundy Myrtles within the front setback and along the eastern boundary (mature height and spread of 5 metres and 3 metres).
  - twelve Ornamental Pears along the eastern and western boundaries (mature height and spread of 8 metres and 3 metres).
  - two Weeping Lillys along the rear boundary (mature height and spread of 8 metres and 5 metres).
  - one Dwarf Sugar Gum along the rear boundary (mature height and spread of 8 metres and 4 metres).



- six Crimson Spires between the building modules (mature height and spread of 5 metres and 2 metres).

- 38 As the site has a width of 15.2 metres, the varied Standard B13 requires a minimum of four trees (capable of growing to a height that exceeds the building height) be provided. The proposed Landscape Plan shows a total of 27 canopy trees with heights ranging from 5 metres to 8 metres. The vegetation mix also includes native and exotic tree species. As the tree selection shown on the Landscape Plan does not provide species that will grow to a height that exceeds the building height of 9.6 metres (as sought in the GRZ6), I will require the Landscape Plan be amended to provide at least four of the canopy trees be capable of growing to a height that exceeds the overall building height.
- 39 Turning to the preferred character statement I am satisfied that sufficient landscaping and open space and canopy trees are provided within the development, and the proposed separation between the three building modules will allow for the establishment of canopy planting. Vegetation is proposed to be provided in the front, side and rear setbacks and along the accessway.
- 40 I do not agree with Council that the building will not make a positive contribution to the Lillian Street streetscape, by not replicating the traditional housing with recessed first floors and pitched roof forms. Contemporary housing styles with flat roofed form are emerging in the immediate context. As the site is within an area where a greater level of housing change is expected to occur over time, the inclusion of a flat roof within an area of predominantly pitched roofs is justified. The approved development on the adjoining land at No. 87 Madeleine Road, Clayton and the newly constructed development at No. 31 Colonel Street both provide for a flat roof form.



Figure 1: Front elevation

- 41 With respect to upper level articulation of the front façade, the recently constructed development at Nos. 3-5 Lillian Street has no upper level front

façade recession and presents as a sheer three storey form when viewed from the street.

- 42 I agree with the applicant that this proposal provides greater articulation along the front façade given the balcony at the first floor level provides a void element in the façade which is further enhanced by the recessed second floor level. Finally, the Precinct Plan expresses that development *over* 9.9 metres in height be set back beyond the preferred 4 metre street setback, and in this case the overall height of the building is less than 9.9 metres. Based on this neighbourhood character context, I am satisfied that the building massing is acceptable.
- 43 Further, I do not agree that the ground floor of the development is dominated by garages, nor that there is poor activation through the site. With respect to the cantilevered first and second floors, I am satisfied that this overhang has been appropriately sited along the western elevation where it interfaces with the common driveway of Nos. 1/14 and 2/14 Lillian Street. Whilst cantilevered forms are not the predominant form found in the area, recent developments such as No. 31 Colonel Street approximately 140 metres to the north east includes a cantilevered first and second floor footprint.
- 44 More broadly, I am satisfied that the proposed materials schedule includes a contemporary selection of building materials which are respectful of the existing streetscape character, noting that brick, weatherboard and rendered surfaces are prevalent in the area.
- 45 Finally, I do not share Council's concerns regarding the extent of hard paving. I am satisfied that the extent of paving when viewed from the street has been minimised by providing one shared vehicle and pedestrian accessway which is inset from the eastern side property boundary to provide landscaping opportunities.

## **WOULD ACCEPTABLE LEVELS OF INTERNAL AMENITY BE PROVIDED?**

### **Summary of parties' positions**

- 46 The council submits that the proposed layout would not provide acceptable levels of internal amenity for future occupants due to:
- the requirement for extensive screening to balconies and windows.
  - only one of the eight dwellings (Dwelling 1) facing north, contrary to Standard B10 (energy efficiency objectives).
  - dwelling entries not being easily visible from the street, as the first floor overhangs a large part of the driveway.
  - the minimal passive surveillance of the driveway from within the development (Dwelling 8 only contains a kitchen window that has an





outlook towards the driveway at ground level and upper level windows/balconies are largely screened).

47 In rebuttal, the applicant says:

- Standard B10 does not require all dwellings to be northern orientated but rather states that living areas and private open space should be located on the north side of the development, if practicable.
- Dwellings 2 - 7 are each provided with a west facing living area and balcony that will receive excellent afternoon solar access with Dwelling 8 provided with a dual aspect living area to its east and south that will also receive good levels of solar access.
- Given the site's interfaces with the adjoining properties, screening to windows cannot be avoided.

#### Tribunal findings

- 48 While Council was critical that the balcony private open spaces are insufficient for the recreation needs of the likely future residents, I am satisfied that each dwelling is provided with private open space that meets the varied Standard B28 (Clause 55.05-4 Private Open Space) with direct access to living spaces. Further, each dwelling which relies on a balcony level POS is also provided with a supplementary ground level service yard that is of a generous size and allows for the planting of canopy trees.
- 49 Standard B10 Energy Efficiency Objectives at Clause 55.03-5 seeks, amongst other matters, that living areas and private open space should be located on the north side of the development, if practicable and that developments should be designed so that solar access to north-facing windows is maximised.
- 50 Before deciding on an application, the responsible authority must consider, amongst other matters, the design response and the size, orientation and slope of the lot.
- 51 I am satisfied that the proposal has maximised the number of north facing windows. In the context of a north-south oriented lot, the proposal has, as far as is practicable, achieved an orientation and layout that reduces fossil fuel energy use and makes appropriate use of daylight and solar energy.
- 52 The Standard and objective are met.
- 53 Standard B12 Safety Objective at Clause 55.03-7 seeks to ensure the layout of development provides for the safety and security of residents and property. The Standard seeks:
- Entrances to dwellings and residential buildings should not be obscured or isolated from the street and internal accessways.

- Planting which creates unsafe spaces along streets and accessways should be avoided.
  - Developments should be designed to provide good lighting, visibility and surveillance of car parks and internal accessways.
  - Private spaces within developments should be protected from inappropriate use as public thoroughfares.
- 54 In addition, Standard B26 Dwelling Entry objective seeks to provide each dwelling or residential building with its own sense of identity. The Standard requires that entries to dwellings should be visible and easily identifiable from streets and other public areas and provide shelter, a sense of personal address and a transitional space around the entry.
- 55 With respect to Standards B12 and B26, I am satisfied that the entrances to Dwelling 2 – 8 are legible from within the internal accessway. The design provides a transitional space around each entry, and the varied paving surface directly opposite the front doors further reinforces the dwelling entries. The standards and objectives are met.
- 56 Finally, with respect to the proposed screening of balconies, I am satisfied, based on the substituted plans, that the use of vertical louvres with a maximum transparency of 25% will ensure that daylight access is provided to an acceptable level for future residents whilst preventing unreasonable overlooking opportunities.

## **ARE THERE ANY UNREASONABLE OFF SITE AMENITY IMPACTS?**

### **Summary of parties' positions**

- 57 The Council says the layout and design fails to mitigate visual bulk impacts as landscaping opportunities are limited along the side boundaries and there are insufficient breaks and recesses in the built form. They acknowledge that whilst the first floor side setbacks satisfy Standard B17 Side and Rear setbacks Objective at Clause 55.04-1, the second floor setbacks do not.
- 58 They say that the minimal second floor side setbacks for almost the full length of the development exacerbate visual bulk impacts on neighbouring properties and the proposed setbacks are inappropriate having regard to the objective of the standard.
- 59 The SOG received from an abutting landowner says the proposal will result in unreasonable overshadowing of their property.
- 60 The applicant says that the proposed side boundary setbacks generally comply with the requirements of Standard B17 with exception to the top section of the second floor level along the side elevations. However, they highlight that these setbacks fully comply with the adopted Precinct Plan.
- 61 They say that visual bulk impacts to neighbouring properties have been mitigated by scaling down the development to two storeys at the rear of the



property and providing landscaped interfaces that will soften views from the neighbouring properties towards the proposed development.

### Tribunal findings

- 62 I have previously referred to the varied Standard B17 with respect to front and rear setbacks (which are satisfied in the proposal). Standard B17 seeks to ensure that the height and setback of a building from a boundary respects the existing or preferred neighbourhood character **and** limits the impact on the amenity of existing dwellings.
- 63 Based on my findings that this is an area identified for more intensive housing, I am satisfied that the setback of the buildings from the side boundaries respects the preferred neighbourhood character.
- 64 With respect to the second part of the objective of this clause, the Council acknowledges that despite the non-compliance with Standard B17, that the shadow diagrams show compliance with Standard B21 Overshadowing Open Space Objective at Clause 55.04-5.
- 65 With respect to overshadowing of open space on abutting properties, Standard B21 of Clause 55.04-5 (Overshadowing Open Space objective) requires:
- Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of three metres, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September.
  - If existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.
- 66 Having reviewed the overshadowing diagrams that form part of the application, I am satisfied that the proposed development does not cast any shadows over the secluded private open space (of No. 89 Madeleine Road) between 9.00am and 12.00pm, with additional overshadowing only occurring at 2.00pm and 3.00pm. At 2.00pm, an area of 121.7 square metres is unaffected by overshadowing and at 3.00pm, an area of 84.2 square metres is unaffected by overshadowing.
- 67 Given an area greater than 40 square metres will receive a minimum of five hours of sunlight between 9.00am and 3.00pm on 22 September, compliance with Standard B21 of Clause 55.04-5 (Overshadowing Open Space Objective) has been achieved.
- 68 Finally, amenity implications arising from non-compliance with Standard B17 are then related to the impact of visual bulk on the adjacent side abutting properties. As both such properties exist within the same planning policy framework, they are likely opportunity sites for more intensive



redevelopment with more robust forms. The proposed side setbacks also comply with Council's most recent thinking as expressed in the adopted Precinct Plan, being fully compliant with the setbacks expressed in this document.

- 69 More broadly, I am satisfied that the second floor levels are appropriately articulated to mitigate their visual impact. This is achieved via two 3.2 metre wide breaks in the built form between Dwellings 3 and 4 and Dwellings 5 and 6, and such breaks occur at ground level allowing for the planting of canopy trees. These breaks avoid the impact of continuous built form extending the depth of the allotment. Further, there is no boundary wall construction proposed.
- 70 In conclusion, I am satisfied that there are no adverse amenity impacts to the surrounding properties, noting that the overlooking and daylight to windows provisions of Clause 55 have also been met.

**ARE THERE ANY OTHER ISSUES?**

- 71 The SOG submitted by a nearby resident opposes the proposal on the basis of a lack of visitor parking. As the site is located within the Principal Public Transport Network (PPTN) area, there is no requirement at Clause 52.06 (Car Parking) for the proposed development to provide any onsite visitor car parking spaces. As the proposal relies on a single shared crossover, there will be no loss of on-street car parking.
- 72 While the SOG says that the additional traffic arising from the development will impact on the function of nearby roads, Council's traffic engineers do not oppose the proposal on traffic grounds. I am satisfied that the addition of seven new dwellings (above the one existing dwelling) will result in a small increase in traffic movements but there is no evidence to suggest that there would be any adverse traffic safety or operational impacts along Lillian Street or the surrounding road network.
- 73 The SOG expressed concerns that the building will result in shadowing of the existing roof where it is intended to erect solar panels. Consideration of future solar panels is not required under the Planning Scheme, but I accept in any event that any future installation of solar panels on the adjoining property is unlikely to be compromised as the rooftop of the neighbouring dwelling is set back approximately 18 metres from the review site.
- 74 Finally, the SOG assert that the proposal will result in a devaluation of adjoining land. Devaluation is not a relevant planning consideration in this application. In any event, the party did not provide any evidence of such a claim.



## **WHAT CONDITIONS ARE APPROPRIATE?**

75 Conditions were discussed at the hearing and any changes to the permit conditions contained in Appendix A of this order reflect those discussions plus further consideration by the Tribunal.

## **CONCLUSION**

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

**K Birtwistle**  
**Member**



## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	TPA/53246
<b>LAND</b>	16 Lillian Street CLAYTON

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two or more dwellings

## CONDITIONS

### Amended Plans Required

- 1 Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned. When the plans are endorsed they will then form part of the Permit. The must be generally in accordance with plans prepared by Archmap, dated 12/07/2022 and labelled Revision C, but modified to show:
  - (a) Relocation of the 900mm high blade side fence located to the east of the driveway to align it with the western side wall of the Dwelling 1 study, with the landscape area between the driveway and the relocated fence provided as part of the common property landscape space. The length of the front fence must be reduced accordingly, so that it ends level with the relocated side fence.
  - (b) The louvered screens provided to first floor balconies and first and second floor habitable room windows clearly labelled on both the floor plans and elevations as having a minimum height of 1.7 metres above FFL and a maximum transparency of 25%.
  - (c) Screening treatment to the west facing first floor kitchen windows of Dwellings 3, 5, 6 and 7 in accordance with the requirements of Standard B22 of Clause 55 of the Monash Planning Scheme, unless it is satisfactorily demonstrated (e.g. by cross-section or other diagrams) that no screening is required to satisfy Standard B22, to the satisfaction of the Responsible Authority
  - (d) Screening treatment to the west facing balconies of Dwellings 4 and 5, in accordance with the requirements of Standard B22 of Clause 55 of the Monash Planning Scheme, unless it is satisfactorily demonstrated that no screening is required to satisfy Standard B22 (e.g. by including dimensions that demonstrate that balcony edges are more than 9 metres away from neighbouring habitable room windows and



secluded private open space areas), to the satisfaction of the Responsible Authority.

- (e) A minimum of 6m<sup>3</sup> of storage for each dwelling, which must be located outside of the TPZ of neighbouring trees.
- (f) A corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) both sides of vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
- (g) 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".
- (h) A Landscape Plan in accordance with Condition 3 of this Permit;
- (i) A Tree Management Plan in accordance with Condition 5 of this Permit;
- (j) A Waste Management Plan in accordance with Condition 11 of the Permit;
- (k) A Sustainable Design Assessment in accordance with Condition 13 of this Permit.

#### **Layout not to be Altered**

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

#### **Landscape Plan**

- 3 Before the development commences, 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. When approved, the plan will be endorsed and will then form part of the Permit. The plan must be generally in accordance with the Landscape Plan prepared by Zenith Landscape Concepts Pty Ltd Revision 2 dated 7/22, but modified to show:
  - (a) Alteration to the species selection to provide a minimum of four canopy trees capable of growing to a height exceeding the proposed building height.
  - (b) Details of changes required by Condition 1 of this Permit.
  - (c) The location of reticulated services on adjoining sites that may be impacted by roots of proposed new planting.



- (d) The detail and location of any retaining walls associated with the landscape treatment of the site noting any retaining wall structures must be located wholly within the review site boundary.
- (e) Details of all proposed surface finishes including pathways, accessways;
- (f) 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;
- (g) The location of any external lighting.

to the satisfaction of the Responsible Authority. When approved the plan will be endorsed and will then form part of the permit.

### **Landscaping Prior to Occupation**

- 4 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.

### **Tree Management Plan**

- 5 Concurrent with the submission of amended plans in accordance with Condition 1 of this Permit and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the Permit. The TMP must be prepared by a suitably qualified and experienced arborist. The TMP must make specific recommendations in accordance with the *Australian Standard AS4970: 2009 - Protection of Trees on Development Sites* and detail the following to the satisfaction of the Responsible Authority ensuring the trees to be retained remain healthy and viable during construction:

- (a) A Tree Protection Plan drawn to scale that shows:
  - i the tree protection zones and structural root zones of Tree Nos 13 to 25 inclusive, which are all on adjoining land (tree numbering reflects that shown on the amended ground floor plan).
  - ii all tree protection fenced off areas and areas where ground protection systems will be used;
  - iii the type of footings, including posts to new perimeter fencing, within any tree protection zones;
  - iv no excavation within structural root zone areas.
  - v any services to be located within the tree protection zone and a notation stating all services will either be located outside of the tree protection zone, bored under the tree protection zone,





or installed using hydro excavation under the supervision of the Project Arborist; and

- vi a notation to refer to the TMP for specific detail on what actions are required within the tree protection zones.
- (b) details of how the root system of any tree to be retained will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the Project Arborist;
- (c) supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority; and
- d) any remedial pruning works required to be performed on tree canopies located within subject site. The pruning comments must reference *Australian Standards 4373:2007, Pruning of Amenity Trees* and a detailed photographic diagram specifying what pruning will occur, to the satisfaction of the Responsible Authority.

- 6 The recommendations contained in the approved TMP must be implemented to the satisfaction of the Responsible Authority.

**Trees to be protected**

- 7 All trees specified in the endorsed TMP are to be protected and maintained in accordance with the recommendations set out in the report, to the satisfaction of the Responsible Authority.

**Contractors to be advised of trees to be retained**

- 8 The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of trees to be retained as detailed in the endorsed TMP pursuant to Condition 5 of this Permit and are advised of any obligations in relation to the protection of those trees.

**Supervision of works by arborist**

- 9 All buildings and works within the Tree Protection Zone and Critical Root Zone as specified in the endorsed TMP must be supervised by a suitably qualified and experienced arborist, to the satisfaction of the Responsible Authority.

**No material near trees**

- 10 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 construction period of the development hereby permitted without the prior written consent of the Responsible Authority.



### **Waste Management Plan**

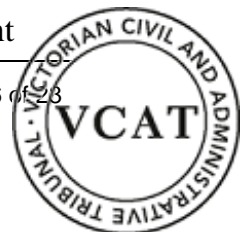
- 11 Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan must be submitted and approved by the Responsible Authority. The plan must provide details of a regular private (including recyclables) collection service for the subject land and be prepared in accordance with the *Multi-Unit and Commercial Developments Waste Management Plan Guide for Applicants*. The plan must include the following:
- (a) The method of 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(s); and
  - (e) Type / Size of private waste vehicles.

### **Hours for Waste Collection**

- 12 Waste collection only to be carried out within hours prescribed by EPA guidelines to the satisfaction of the Responsible Authority.

### **Sustainable Design Assessment (SDA)**

- 13 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:
- (a) 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.
  - (b) Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
  - (c) Document the means by which the appropriate target or performance is to be achieved.
  - (d) Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
  - (e) Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.
- 14 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.

### **Drainage**

- 15 The site must be drained to the satisfaction of the Responsible Authority.
- 16 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.
- 17 The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve.
- 18 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.

### **Road Infrastructure**

- 19 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.

### **Permits**

- 20 Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council drains and these works are to be inspected by Council's Engineering Department.

### **Vehicle Crossovers**

- 21 Engineering permits must be obtained for new or altered or removal of vehicle crossings, works within the Road Reserve and for connections to Councils drains / Council pits / Kerb & Channel and these works are to be inspected by Council.
- 22 All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
- 23 Any works within the road reserve must ensure the footpath and nature-strip are to be reinstated to Council standards.

### **Satisfactory Continuation and Completion**

- 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*, if one of the following circumstances applies:
  - (a) The development is not started within three years of the issue date of this permit.

- (b) The development is not completed within five years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

**– End of conditions –**

