VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT DIVISION

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| planning and environment LIST | vcat reference Nos. P6111/2019, P612/2019, P613/2019 and P614/2019Permit application Nos. TPA/ 49698, TPA/49696, TPA/49701 and TPA/49687 |
| CATCHWORDS |
| Section 77 *Planning and Environment Act 1987*; Four separate proceedings Monash Planning Scheme; General Residential Zone; Four adjoining lots; Three dwellings on each lot; Neighbourhood Character; Amenity |

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| APPLICANTS |  |
| P611/2019 | Lucarano Pty Ltd |
| P612/2019 | Lawar Pty Ltd |
| P613/2019 | Carmino Domenico Lucarelli |
| P614/2019 | Nicolette Lucarelli |
| responsible authority | Monash City Council |
| SUBJECT LAND | 34, 36, 38 and 40 Glenbrook Avenue CLAYTON VIC 3168 |
| WHERE HELD | Melbourne |
| BEFORE | Megan Carew, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 3 October 2019 |
| DATE OF ORDER | 28 October 2019 |
| CITATION | Lucarano Pty Ltd v Monash CC [2019] VCAT 1681 |

# Order

## P611/2019

1. 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: | Jesse Ant Architects |
| Drawing numbers: | TP00-TP09 |
| Dated: | 20 August 2019 |

1. In application P611/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/ 49698 a permit is granted and directed to be issued for the land at 36 Glenbrook Avenue, Clayton in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* The development of three (3) dwellings.

## P612/2019

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* the permit application is amended by changing the name of the permit applicant to:

Lawar Pty Ltd

1. 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: | Jesse Ant Architects |
| Drawing numbers: | TP00-TP09 |
| Dated: | 20 August 2019 |

1. In application P612/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/49696 a permit is granted and directed to be issued for the land at 24 Glenbrook Avenue, Clayton in accordance with the endorsed plans and the conditions set out in Appendix B. The permit allows:
* The development of three (3) dwellings.

## P613/2019

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* the permit application is amended by changing the name of the permit applicant to:

Carmino Domenico Lucarelli

1. Pursuant 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: | Jesse Ant Architects |
| Drawing numbers: | TP00-TP09 |
| Dated: | 20 August 2019 |

1. In application P613/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/49701 a permit is granted and directed to be issued for the land at 38 Glenbrook Avenue, Clayton in accordance with the endorsed plans and the conditions set out in Appendix C. The permit allows:
* The development of three (3) dwellings.

## P614/2019

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* the permit application is amended by changing the name of the permit applicant to:

Nicolette Lucarelli

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:

|  |  |
| --- | --- |
| Prepared by: | Jesse Ant Architects |
| Drawing numbers: | TP00-TP09 |
| Dated: | 20 August 2019 |

1. In application P614/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/49687 a permit is granted and directed to be issued for the land at 40 Glenbrook Avenue, Clayton in accordance with the endorsed plans and the conditions set out in Appendix D. The permit allows:
* The development of three (3) dwellings.

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| **Megan Carew****Member** |  |  |

# Appearances

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| For applicants | Mr John Joyner, Town Planning Consultant, Melbourne Planning Outcomes.He called Mr John Patrick, Landscape Architect to give evidence. |
| For responsible authority | Mr David DiGiovanni, Town Planning Consultant |

# Information

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| Description of proposal | The subject site comprises four consecutive lots located on the east side of Glenbrook Avenue, one dwelling south of the intersection with Woodside Avenue. It is proposed to develop each lot separately with three double storey dwellings in a tandem arrangement. In each development, Units 1 and 2 are attached and in a reverse living format, while Unit 3 is a traditional format. Unit 1 comprises three bedrooms, Unit 2 is two bedrooms and Unit 3 is four bedrooms. |
| Nature of proceedings | Applications under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit.  |
| Planning scheme | Monash City Council |
| Zone and overlays | General Residential Zone- Schedule 2 |
| Permit requirements | Clause 32.08-6 To construct two or more dwellings on each lot. |
| Relevant scheme policies and provisions | Clauses 11,15, 16, 18, 19, 21, 22.01, 22,04, 22.05, 32.08, 52.06, 55, 65, 71.02 |
| Land description | The four consecutive lots are located within the residential area that forms part of the Monash National Employment Cluster. Each of the four lots has a depth of 40.84 metres and a width of 17.07 metres with a total site area of 697.14m2. Each is developed with a single dwelling and outbuildings. The area is residential in nature with a mix of housing typologies. Monash University is located about 480m to the east of the site. |
| Tribunal inspection | I inspected the review sites and their surrounds following the hearing. |

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

## What is this proceeding about?

1. The permit applicants seek to develop three double storey dwellings on each of four consecutive lots located on the east side of Glenbrook Avenue.
2. Each lot is in separate ownership and a consolidated proposal is not before me. Each individual proposal must be assessed on its merits, both in the context of the possibility that the other lots remain in their current (not developed) state and with regard to the four proposals as a whole.
3. There was no dispute between the parties that the review sites were suitable for medium density housing which is encouraged by the General Residential Zone.
4. What was in dispute is whether the proposals acceptably respond to their site context. Council says the proposals fail to respect the neighbourhood character and do not respond to the circumstances of each site, being a “cookie-cutter” design.
5. I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented and with regard to the applicable policies and provisions of the Monash Planning Scheme, I have determined to grant a permit for each site subject to conditions. My reasons follow.

## DO THE PROPOSALS RESPOND TO the NEIGHBOURHOOD CHARACTER?

1. This area has a suburban character with original dwellings on large lots such as seen on the four review sites. This traditional character is reflected in the policy at Clause 22.01 that includes the review sites within Character Area B that has its character derived from “1945-1965 development, flat topography and grid subdivision”.
2. Clause 21.01 includes the Monash Housing Strategy 2014 as a reference document. The Housing Strategy includes the review sites within Category 3- Residential land in the Monash National Employment Cluster. This area is identified for “Housing Change and Diversification”[[2]](#footnote-2). In such areas *development will respond to the broader context, taking into account both commercial design and residential character as relevant*.
3. Council submitted that:

There is no doubting that the review site enjoys strategic support for some level of intensification given its proximity to the Monash Employment Cluster.

The physical context also reveals evidence of intensification in built form/ density with the most obvious example the apartment development on the consolidated corner site of Woodside Street [sic] and Koonawarra Ave.

1. I agree with Council that there is evidence of significant change occurring within this precinct, with examples of medium density housing including dual occupancies and contemporary apartments. A recent planning permit for 32 Glenbrook Avenue, to the north of No. 34 has given permission for the corner unit of an older style dual occupancy to be redeveloped for two new dwellings (effectively three dwellings on the original lot). Nos. 48-50 Glenbrook Avenue comprises 6 units across two lots with a centralised access arrangement.
2. If all four of these proposals proceed, there will be a significant change to the existing streetscape and neighbourhood character, however as set out above, it is a precinct where change is occurring. The question is whether the design response for each site is acceptable in this context. The combined effect of the four proposals is best illustrated in the consolidated landscape plan within the evidence of Mr Patrick (Figure 1).

Figure 1 Combined landscape plan



### Streetscape

1. From a streetscape perspective, the front dwelling on each lot will face the street with a single accessway to the southern boundary reflective of the traditional dwellings. The existing street trees will be retained.
2. Each front dwelling will be set back in accordance with the varied Standard B6 in the schedule to the zone at 7.6m. The large front setbacks will allow for landscaping in accordance with Mr Patrick’s landscape concept plan. No front fencing is proposed. The evidence of Mr Patrick was that each development can be landscaped in a consistent manner that would contribute to the Monash garden character, yet with subtle differences to respond to the circumstances of each site.
3. I find that each proposal is an acceptable response to the streetscape and the policy objectives to encourage a garden city character. I find this even if each development was to occur separately.
4. Mr Patrick considered the neighbouring trees within the front of the dwelling at No. 42 (southern boundary of No. 40) being Tree 24 a sweet pittosporum (in decline) and Tree 25, a sweet gum (dead). It was the evidence of Mr Patrick that the driveway should not be realigned as suggested by Council to protect these trees. I agree with the evidence of Mr Patrick that a better streetscape outcome in the long term will be achieved by maintaining the regularity of the driveway for the development at No. 40, with basic tree protection for Tree 24 provided in the form of a permeable driveway constructed at grade.

### Development through the sites

1. Given the level of development in this precinct, it is not an area where there is a consistent backyard character. There is clearly new development of two storey form within the backyard space. A good example of this is the development at 37 Koonawarra Street to the rear of No. 38 Glenbrook Avenue.
2. In respect to the form of development throughout each site, the positioning of the driveways to the south side provides for good dwelling orientation and reduces the possibility of shadow impacts to existing and proposed private open spaces. Council questioned the orientation of the courtyards for Unit 3 of each development, noting that the wider area is located in the south east, rather than to the north. I find that this is acceptable given the total area of private open space available to these units (subject to the increased width for No. 40 Glenbrook Avenue discussed below).
3. I find that Units 1 and 2 for each proposal are positioned to generally align with the position of the traditional dwellings. There is good separation between the front two dwellings and the rear dwelling in each case which will provide visual relief from current backyards should the developments not proceed together.
4. The proposal for No. 34 Glenbrook Avenue is located to the south of a recently approved development at No. 1/32 Glenbrook Avenue (two double storey townhouses) and the rear existing single storey dwelling. Council submitted that the built form would present visual bulk to the private open space of these neighbouring units as they are currently configured and as proposed to be configured. I find that the spacing between Units 2 and 3 for No. 34 Glenbrook Avenue sufficiently alleviates the visual bulk from these spaces.
5. The rear setback is a minimum of 3m for Unit 3 as proposed for Nos. 34-38 Glenbrook Avenue. This is acceptable and will provide for good landscaping opportunities. The upper levels of these dwellings are setback at least 4m which minimises visual bulk to the rear. At No. 40 Glenbrook Avenue the rear setback is reduced to 2.5m and the first floor a minimum of 2.925m. I find that the rear setback to No. 40 Glenbrook Avenue should be increased to a minimum of 3m at ground level and 4m at first floor level to provide for an acceptable landscape and visual bulk outcome to the rear. This, when combined with the constraints of the tree on the abutting property to the south (Tree 26) may result in Unit 3 being reduced in size.
6. Tree 26 adjoins the south-east corner of No. 40 Glenbrook Avenue. This tree is a mature Southern Mahogany (Eucalyptus botryoides) that will require protection. Mr Patrick undertook a review of the incursion of the proposed development into the tree protection zone of this tree and determined that it would comply with *AS 4970-2007 Protection of Trees on Development Sites*. However, there is encroachment within the structural root zone and I find that the proposal should be redesigned to address this.
7. The evidence of Mr Patrick demonstrates that the sites can accommodate new landscaping including larger trees, for example he has proposed two fastigiate species “crimson spire” along each driveway. I am satisfied that there will be sufficient opportunities for landscaping throughout the sites to contribute to the preferred garden city character.

## AMENITY CONSIDERATIONS

1. Subject to conditions, the combined proposal complies with the relevant Clause 55 standards for privacy. However, these are all individual applications and screening would be required in case one goes ahead and not the others. For example, the proposed north facing balcony of Unit 2 on No. 36-40 Glenbrook Avenue. I have required this in the permit conditions as a catch all. In the event that the developments proceed together, the plans can be amended by secondary consent.
2. Council questioned the location of the balcony for Unit 2 of No. 34 Glenbrook Avenue in proximity to neighbouring courtyards. I find that this is acceptable in this residential context.
3. Overshadowing and daylight to habitable room windows on adjoining properties generally comply with the standards and I find these aspects acceptable. I have considered the additional shadow to Unit 3/37 Koonawarra Street from the development at No. 38 Glenbrook Avenu. This would not comply with Standard B21 of Clause 55 as the courtyard is shadowed by its own development in the morning and the review site in the afternoon. However, I find that the objective is met as the shadow cast by the proposal does not extend beyond the fence line until about 2pm and that there will remain areas with sunlight access at this time.

## INTERNAL AMENITY

1. The proposal provides for good internal amenity for Units 1 and 3 of each site. However, the living area of Unit 2 in each proposal is only 3m in width. If Clause 58 (apartment guidelines) were to be applied as a guide, a minimum width of 3.6m would be the standard (total area 12m2). I find that the living area should be larger for these two bedroom dwellings. I considered the suggestion of the applicant at the hearing that this could occur to the east. However, I find that the spacing between units 2 and 3 is important to maintain. I have no concern about an increase in the living area to the south of each dwelling, even if this cantilevers in this location and have required this by condition.
2. As set out above, the balcony to Unit 2 of No. 34 Glenbrook Avenue requires screening as shown on the plans. The equivalent balconies to each of Nos.36-40 Glenbrook Avenue should also be shown as screened (as these are separate applications that could proceed separately). The screening should be designed to comply with Standard B22, but also to maximise outlook from these dwellings. Screening could be removed should the applications proceed together.
3. Council noted that Standard B20 (North facing windows) would not be met to the new ground floor bedroom and dining room/kitchen of Unit 3, No. 36, 38 and 40 Glenbrook Avenue. I find that the proposal meets the objectives given that there is compliance at first floor, alternative windows to the dining space and alternative bedroom options.

## CAR PARKING AND TRAFFIC

1. Each proposal provides the required car parking spaces in accordance with Clause 52.06 of the planning scheme and as such the quantum of car parking is not before me. The applicant provided a Traffic memorandum for each development detailing the site layout and turning movements.
2. Council questioned the ability to achieve landscaping in the context of turning movements. I find that the turning movements are acceptable for Units 2 and 3 in each case. I accept that movements to Unit 1 are more constrained, but find that the possible additional correcting manoeuvre required for a larger vehicle to avoid landscaping is acceptable.
3. There was no evidence before me that the traffic generated by this development cannot be accommodated within the surrounding road network.

## WHAT CONDITIONS ARE APPROPRIATE?

1. In determining the conditions of permit, I have had regard to the draft conditions discussed at the hearing and the submissions of the parties as well as the matters arising from my reasons above.
2. Clause 22.13 seeks a Sustainable Design Assessment (SDA) for developments of 3-9 dwellings and suggests a BESS and/ or STORM assessment. I have included a requirement for an updated SDA for each development as a condition of permit.

## Conclusion

1. For the reasons given above, the decision of the responsible authority in each proceeding is set aside. A permit is granted for each application subject to conditions.

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| Megan Carew**Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No | TPA/49698 |
| Land | 36 Glenbrook Avenue, Clayton |

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| What the permit allowS |
| In accordance with the endorsed plans:* The development of three (3) dwellings.
 |

1. Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will then form part of the permit. The plans must be generally in accordance with the amended plans, identified as ‘Issue for VCAT’ and prepared by Jesse Ant Architects dated 20 August 2019, but modified to show:
	1. The internal dimensions of all garages.
	2. Dimensions of all storage areas (height, width etc) demonstrating how 6 cubic metres is achieved.
	3. Privacy screening to all windows and balconies to comply with Standard B22 of Clause 55.
	4. Increased width of the living area of Unit 2 from north to south to a minimum of 3.6m.
2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. A landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority prior to the commencement of any works. The plan must be generally in accordance with the Landscape Concept Plan prepared by John Patrick dated September 2019 and show the proposed landscape treatment of the site including:-
	1. the location of all existing trees and other vegetation to be retained on site.
	2. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development. The planting provision is to include tall trees that when grown will positively contribute to the upper level tree canopy of the area.
	3. planting to soften the appearance of hard surface areas such as driveways and other paved areas.
	4. a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material (semi-mature plant species are to be provided).
	5. the location and details of all fencing.
	6. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
	7. details of all proposed hard surface materials including pathways, patio or decked areas.
	8. coloured concrete, paving or the like is to be utilised in the driveways.
	9. deletion of reference to the front fence.

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

1. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.
2. The walls facing the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.
3. The driveway and parking area is to be constructed to the satisfaction of the responsible authority.
4. The new vehicle crossing must be constructed in accordance with Council standards.
5. Any existing redundant crossings are to be removed and replaced with nature strip and kerb and channel to Council standards.
6. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties.
7. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.
8. Any new drainage work within road reserve requires the approval of the Council’s Engineering Division prior to the works commencing.
9. Once the development has started it must be continued, completed and then be maintained to the satisfaction of the Responsible Authority.
10. Prior to the commencement of any buildings or demolition works, a Sustainable Design Assessment  (SDA) must be submitted to and approved by the Responsible Authority. All works must be undertaken in accordance with the submitted and endorsed SDA to the satisfaction of the Responsible Authority.
11. This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
	1. The development is not started within two (2) years of the issue date of this permit.
	2. The development is not completed within four (4) 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 –**

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# Appendix B – Permit Conditions

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| Permit Application No | TPA/49696 |
| Land | 34 Glenbrook Avenue, Clayton |

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| What the permit allowS |
| In accordance with the endorsed plans:* The development of three (3) dwellings.
 |

## Conditions

1. Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will then form part of the permit. The plans must be generally in accordance with the amended plans, identified as ‘Issue for VCAT’ and prepared by Jesse Ant Architects dated 20 August 2019, but modified to show:
	1. The internal dimensions of all garages.
	2. Dimensions of all storage areas (height, width etc) demonstrating how 6 cubic metres is achieved.
	3. Privacy screening to all windows and balconies to comply with Standard B22 of Clause 55.
	4. Increased width of the living area of Unit 2 from north to south to a minimum of 3.6m.
2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. A landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority prior to the commencement of any works. The plan must be generally in accordance with the Landscape Concept Plan prepared by John Patrick dated September 2019 and show the proposed landscape treatment of the site including:-
	1. the location of all existing trees and other vegetation to be retained on site.
	2. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development. The planting provision is to include tall trees that when grown will positively contribute to the upper level tree canopy of the area.
	3. planting to soften the appearance of hard surface areas such as driveways and other paved areas.
	4. a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material (semi-mature plant species are to be provided).
	5. the location and details of all fencing.
	6. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
	7. details of all proposed hard surface materials including pathways, patio or decked areas.
	8. coloured concrete, paving or the like is to be utilised in the driveways.
	9. deletion of reference to the front fence.

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

1. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.
2. The walls facing the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.
3. The driveway and parking area is to be constructed to the satisfaction of the responsible authority.
4. The new vehicle crossing must be constructed in accordance with Council standards.
5. Any existing redundant crossings are to be removed and replaced with nature strip and kerb and channel to Council standards.
6. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties.
7. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.
8. Any new drainage work within road reserve requires the approval of the Council’s Engineering Division prior to the works commencing.
9. Once the development has started it must be continued, completed and then be maintained to the satisfaction of the Responsible Authority.
10. Prior to the commencement of any buildings or demolition works, a Sustainable Design Assessment  (SDA) must be submitted to and approved by the Responsible Authority. All works must be undertaken in accordance with the submitted and endorsed SDA to the satisfaction of the Responsible Authority.
11. This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
	1. The development is not started within two (2) years of the issue date of this permit.
	2. The development is not completed within four (4) 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 –**

# Appendix C – Permit Conditions

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| Permit Application No | TPA/49701 |
| Land | 38 Glenbrook Avenue, Clayton |

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| What the permit allowS |
| In accordance with the endorsed plans:* The development of three (3) dwellings.
 |

## Conditions

1. Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will then form part of the permit. The plans must be generally in accordance with the amended plans, identified as ‘Issue for VCAT’ and prepared by Jesse Ant Architects dated 20 August 2019, but modified to show:
	1. The internal dimensions of all garages.
	2. Dimensions of all storage areas (height, width etc) demonstrating how 6 cubic metres is achieved.
	3. Privacy screening to all windows and balconies to comply with Standard B22 of Clause 55.
	4. Increased width of the living area of Unit 2 from north to south to a minimum of 3.6m.
2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. A landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority prior to the commencement of any works. The plan must be generally in accordance with the Landscape Concept Plan prepared by John Patrick dated September 2019 and show the proposed landscape treatment of the site including:-
	1. the location of all existing trees and other vegetation to be retained on site.
	2. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development. The planting provision is to include tall trees that when grown will positively contribute to the upper level tree canopy of the area.
	3. planting to soften the appearance of hard surface areas such as driveways and other paved areas.
	4. a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material (semi-mature plant species are to be provided).
	5. the location and details of all fencing.
	6. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
	7. details of all proposed hard surface materials including pathways, patio or decked areas.
	8. coloured concrete, paving or the like is to be utilised in the driveways.
	9. deletion of reference to the front fence.

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

1. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.
2. The walls facing the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.
3. The driveway and parking area is to be constructed to the satisfaction of the responsible authority.
4. The new vehicle crossing must be constructed in accordance with Council standards.
5. Any existing redundant crossings are to be removed and replaced with nature strip and kerb and channel to Council standards.
6. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties.
7. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.
8. Any new drainage work within road reserve requires the approval of the Council’s Engineering Division prior to the works commencing.
9. Once the development has started it must be continued, completed and then be maintained to the satisfaction of the Responsible Authority.
10. Prior to the commencement of any buildings or demolition works, a Sustainable Design Assessment  (SDA) must be submitted to and approved by the Responsible Authority. All works must be undertaken in accordance with the submitted and endorsed SDA to the satisfaction of the Responsible Authority.
11. This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
	1. The development is not started within two (2) years of the issue date of this permit.
	2. The development is not completed within four (4) 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 –**

# Appendix D – Permit Conditions

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| Permit Application No | TPA/49687 |
| Land | 40 Glenbrook Avenue, Clayton |

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| What the permit allowS |
| In accordance with the endorsed plans:* The development of three (3) dwellings.
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## Conditions

1. Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will then form part of the permit. The plans must be generally in accordance with the amended plans, identified as ‘Issue for VCAT’ and prepared by Jesse Ant Architects dated 20 August 2019, but modified to show:
	1. The internal dimensions of all garages.
	2. Dimensions of all storage areas (height, width etc) demonstrating how 6 cubic metres is achieved.
	3. Privacy screening to all windows and balconies to comply with Standard B22 of Clause 55.
	4. Increased width of the living area of Unit 2 from north to south to a minimum of 3.6m.
	5. Unit 3 to be setback from the rear boundary a minimum of 3m at ground floor and 4m at first floor with no change to the southern setback.
	6. Unit 3 re-designed to minimise encroachment within the structural root zone of Tree 26 located at 42 Glenbrook Avenue with encroachment into the Tree Protection Zone to be less than 10%.
	7. Tree protection measures require to protect Tree 26.
	8. Permeable driveway constructed at grade within the Tree protection Zone of Tree 24.
2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. A landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority prior to the commencement of any works. The plan must be generally in accordance with the Landscape Concept Plan prepared by John Patrick dated September 2019 and show the proposed landscape treatment of the site including:-
	1. the location of all existing trees and other vegetation to be retained on site.
	2. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development. The planting provision is to include tall trees that when grown will positively contribute to the upper level tree canopy of the area.
	3. planting to soften the appearance of hard surface areas such as driveways and other paved areas.
	4. a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material (semi-mature plant species are to be provided).
	5. the location and details of all fencing.
	6. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
	7. details of all proposed hard surface materials including pathways, patio or decked areas.
	8. coloured concrete, paving or the like is to be utilised in the driveways.
	9. deletion of reference to the front fence.

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

1. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.
2. The walls facing the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.
3. The driveway and parking area is to be constructed to the satisfaction of the responsible authority.
4. The new vehicle crossing must be constructed in accordance with Council standards.
5. Any existing redundant crossings are to be removed and replaced with nature strip and kerb and channel to Council standards.
6. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties.
7. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.
8. Any new drainage work within road reserve requires the approval of the Council’s Engineering Division prior to the works commencing.
9. Once the development has started it must be continued, completed and then be maintained to the satisfaction of the Responsible Authority.
10. Prior to the commencement of any buildings or demolition works, a Sustainable Design Assessment  (SDA) must be submitted to and approved by the Responsible Authority. All works must be undertaken in accordance with the submitted and endorsed SDA to the satisfaction of the Responsible Authority.
11. This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
	1. The development is not started within two (2) years of the issue date of this permit.
	2. The development is not completed within four (4) 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 –**

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. Amendment C125 Part 2 proposes to rezone the review site and to apply a Design and Development Overlay. Given the length of time that this Amendment has been in train, I have given it little weight. [↑](#footnote-ref-2)