VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P1378/2019Permit Application no. TPA/49995 |

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| APPLICANT | Zhenpeng Li |
| responsible authority | Monash City Council |
| SUBJECT LAND | 37 Beddoe Avenue, Clayton |
| WHERE HELD | Melbourne |
| BEFORE | Michael Deidun, Member |
| HEARING TYPE | Major Case Hearing  |
| DATE OF HEARING | 6 December 2019 |
| DATE OF ORDER | 9 December 2019 |

# Order

1. Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act* *1998* the application is amended by changing the name of the applicant to:

Zhenpeng Li

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

Zhenpeng Li

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

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| * Prepared by:
 | Ivy Architects |
| * Drawing numbers:
 | 3B, 4C, 5C, 6D, 7C |
| * Dated:
 | November 2019 |

1. In application P1378/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/49995 a permit is granted and directed to be issued for the land at 37 Beddoe Avenue, Clayton in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* Use of the land for two rooming houses
* To construct a residential building
* To construct a building and construct or carry out works

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| **Michael Deidun** |  |  |
| **Member** |  |  |

# Appearances

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| For applicant | Morgan Livingstone, Town Planner of Song Bowden Planning |
| For responsible authority | Sally Moser, Town Planner of Moser Planning Services |

# Information

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| Description of proposal | The constriction of two double storey rooming houses, in a side-by-side arrangement. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit.  |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | Residential Growth Zone 3 |
| Permit requirements | Clause 32.07-2 to use land within the Residential Growth Zone for a Rooming house where the Section 1 condition is not metClause 32.07-5 to construct a residential building on land within the Residential Growth ZoneClause 32.07-8 to construct a building and construct or carry out works associated with a Section 2 use, on land within the Residential Growth Zone |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 21, 22.01, 22.05, 22.10, 32.07, 52.06, 52.23, 55, 65 and 71.02. |
| Land description | The land is a rectangular allotment with a frontage to Beddoe Avenue of 17.98 metres, a depth of 41.15 metres, and an overall area of 739 square metres. The land presently supports a single storey detached dwelling. |
| Tribunal inspection | The Tribunal inspected the site and surrounding area prior to the hearing, on 27 November 2019. |

# Reasons

1. Zhenpeng Li (the ‘Applicant’) seeks to review the decision of the Monash City Council to refuse to grant a permit for the use and development of rooming houses on land at 37 Beddoe Avenue, Clayton (the ‘review site’). The Council’s grounds of refusal raise matters relating to the impact of the proposed built form on the surrounding neighbourhood character, the impact on the landscape character of the area, the style of development that is proposed and its consistency with the zone and the Monash Housing Strategy, the provision of car parking, and the level of compliance with the standards and objectives set out at Clause 55 of the Monash Planning Scheme.
2. I have decided to set aside the Council’s decision, and direct the grant of a planning permit subject to conditions. Reasons for my decision were given orally at the conclusion of the hearing.

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| **Michael Deidun** |  |  |
| **Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No | TPA/49995 |
| Land | 37 Beddoe Avenue, Clayton |

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| What the permit allowS |
| In accordance with the endorsed plans:* Use of the land for two rooming houses
* To construct a residential building
* To construct a building and construct or carry out works
 |

## Conditions

1. Before the development starts, three copies of amended plans drawn to scale and dimensioned, must be submitted to and be approved by the Responsible Authority. The submitted plans must clearly delineate and highlight any changes. When approved the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans 4C, 5C, 6D & 7C (dated November 2019) drawn by Ivy Architects, but modified to show:
	1. The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at a distance from the street which is at or behind the setback alignment of buildings on site or in compliance with Council’s ‘Guide to Electricity Supply Meter Boxes in Monash’.
	2. Provide 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 each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
	3. Removal of the fence within the front setback that divides the front yards of the two buildings.
	4. The provision of screening to restrict overlooking from the first floor windows to bedrooms 6 & 10 in each building.
	5. Information on the plans demonstrating that each room (including the respective en suite and robe) has a minimum floor area of 16 square metres.
	6. The provision of skylights to provide daylight to the first floor hallways.
2. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
3. Once the development has started it must be continued, completed and maintained to the satisfaction of the Responsible Authority.
4. Prior to the use commencing, a Site Management Plan must be prepared for the site to the satisfaction of the Responsible Authority. The plan must not be modified without the written consent of the Responsible Authority. The plan must provide for (but is not limited to):
	1. Permanent display of the Management Plan in the common area;
	2. The nature of the management of the complex and the contact details of the manager/lead tenant;
	3. Provision for at-call contact details to be displayed so they are clearly visible to any person outside the site for response 24 hours a day and seven days a week;
	4. Provision to ensure that the housing does not cause negative impacts on the amenity of the surrounding area particularly in respect to resident and/or guest behaviour, activities, visitors and parties and the extent to which external areas may be used at night;
	5. A requirement that should behavioural problems occur at the site causing disruption to surrounding residents, the operator under this permit must immediately take ameliorative action to the satisfaction of the Responsible Authority;
	6. The management of car parking spaces;
	7. Maintenance of grounds and upkeep of the buildings;
	8. Details of rubbish bin storage and waste collection;
	9. Management procedures over holiday periods.

The Site Management Plan is to be prepared to the satisfaction of the Responsible Authority and shall only be amended with the written consent of the Responsible Authority.

1. The amenity of the area must not be detrimentally affected by the use or development, through the:
	1. transport of materials, goods or commodities to or from the land;
	2. appearance of any building, works or materials;
	3. emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
	4. presence of vermin;
	5. others as appropriate.
2. Before occupation all buildings and works specified in this permit must be completed to the satisfaction of the Responsible Authority. The Responsible Authority must be advised in writing when all construction and works are completed to enable the site to be inspected.
3. Not more than one person may reside in each room shown on the endorsed plans at any one time.
4. The communal areas of the buildings and open spaces on the land that are shown on the endorsed plans are to be made available and accessible to all persons occupying the premises on a shared basis at any given time to the satisfaction of the Responsible Authority.
5. No form of public address system may be installed so as to be audible from outside the building / site.
6. No goods must be stored or left exposed outside the building so as to be visible from any public road or thoroughfare.
7. Car and bicycle parking areas and access lanes must be developed and kept available for those purposes at all times and must not be used for any other purpose such as storage to the satisfaction of the Responsible Authority.
8. Prior to the commencement of works on the site, a Construction Management Plan must be prepared and submitted to the Responsible Authority for approval. The plan must be to the satisfaction of the Responsible Authority. Once approved, the plan must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
	1. measures to control emissions of noise and dust and water runoff from the site;
	2. prevention of silt or other pollutants from entering Council’s underground drainage system or road network;
	3. the location where building materials are to be kept during construction;
	4. site security to prevent people from entering the construction site;
	5. maintenance of safe movements of vehicles to and from the site during the construction phase;
	6. on-site parking of vehicles associated with construction of the development;
	7. wash down areas for trucks and vehicles associated with construction activities;
	8. a program for cleaning and maintaining surrounding road surfaces.
9. No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.
10. Prior to the commencement of works on the site, the owner shall prepare a Waste Management Plan for the collection and disposal of garbage and recyclables for all uses on the site. The Waste Management Plan shall provide for:
	1. The method of collection of garbage and recyclables for uses;
	2. Designation of methods of collection including the need to provide for private services or utilisation of council services;
	3. Appropriate areas of bin storage on site and areas for bin storage on collection days;
	4. Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas;
	5. Litter management.

A copy of this plan must be submitted to Council.

1. Waste collection is only to be carried out between the hours of 7am to 6pm.
2. The construction works associated with the use/development and/or subdivision hereby permitted must only be carried out during the following hours:
	1. Monday to Friday (inclusive) – 7:00am to 6pm;
	2. Saturday – 9am to 1pm;
	3. Saturday – 1pm to 5pm (Only activities associated with the erection of buildings. This does not include excavation or the use of heavy machinery);

unless otherwise approved in writing by the Responsible Authority.

1. No equipment, services, architectural features or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.
2. Disabled access to the building must be provided to the satisfaction of the Responsible Authority. All work carried out to provide disabled access must be constructed in accordance with Australian Standards Design for Access and Mobility AS 1428.1.
3. All common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line.
4. 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 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;
	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;
	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.

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. Noise from any mechanical service equipment or any noise associated with the premises must at all times comply with the requirements of the State Environmental Protection Policies SEPP N1 and SEPP N-2.
3. Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
4. 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.
5. The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve. The internal drainage system may include either:
	1. a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
	2. shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
	3. another Council approved equivalent.
6. 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.
7. The nominated point of stormwater connection for the site is to the south-east corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the 450 mm Council drain in the naturestrip via a Council approved saddle adaptor to be constructed to Council Standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.
8. Any new connection into a Council easement drain requires the approval of the Council’s Engineering Division prior to the works commencing.
9. Unless no permit is required under the planning scheme, no sign must be constructed or displayed without a further permit.
10. Engineering permits must be obtained for new or altered vehicle crossings and for new connections to Councils drains / Council pits / kerb & channel and these works are to be inspected by Council (telephone 9518 3690).
11. This permit will expire if one of the following circumstances applies:
	1. The development is not started within two years of the issue date of this permit.
	2. The development is not completed within four 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.

1. This permit as it relates to use will expire if the use does not commence within two (2) years after the completion of the approved development.

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 period referred to in this condition.

**– End of conditions –**