VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P417/2021Permit Application no. TPA/51431 |
| CATCHWORDS |
| Monash Planning Scheme; Housing Growth Area – Clayton Activity Centre and Monash National Employment Cluster; three storey medium density development within Schedule 3 to the Residential Growth Zone of the Monash Planning Scheme; the *Clayton Activity Centre Precinct Plan* (City of Monash, January 2020); policies at Clause 21.04 and 22.01 of the Monash Planning Scheme; repeat appeal principles. |

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| APPLICANT | GNL Developments Pty Ltd |
| responsible authority | Monash City Council |
| SUBJECT LAND | 9 Myriong Street, Clayton |
| HEARING TYPE | Major Case Hearing  |
| DATE OF HEARING | 27 August 2021 |
| DATE OF ORDER | 13 September 2021 |
| CITATION | GNL Developments Pty Ltd v Monash CC [2021] VCAT 1062 |

# Order

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by adding the following permissions sought under the Monash Planning Scheme:
	1. To reduce the standard car parking requirement
2. 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:
 | Bello Design Group |
| * Drawing numbers:
 | TP01 to TP17 |
| * Dated:
 | 5 July 2021 |

1. In application P417/2021 the decision of the responsible authority is set aside.
2. In planning permit application TPA/51431 a permit is granted and directed to be issued for the land at 9 Myriong Street, Clayton in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* To construct two or more dwellings on a lot
* To reduce the standard car parking requirement

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

# Appearances

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| For applicant | Daniel Bowden, Town Planner of SongBowden PlanningHe called the following witnesses:* Alistair Campbell, Urban Designer of Hansen Partnership
* Damien Hancox, Traffic Engineer of TTM Consulting
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| For responsible authority | Kate Kennedy, Solicitor of Planology |

# Information

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| Description of proposal | The construction of six attached dwellings, five of which are three storeys in height, and one at two storeys in height. |
| 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 32.07-5 to construct two or more dwellings on a lot on land within the Residential Growth ZoneClause 52.06-3 to reduce the standard car parking requirement |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 21, 22.01, 22.04, 22.13, 32.07, 52.06, 55, 65 and 71.02. |
| Land description | The land is a rectangular allotment which has a frontage to Myriong Street of 15.24 metres, a depth of between 50.08 and 50.25 metres, and an overall area of 764 square metres. The land presently supports a single storey detached dwelling. |

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

## What is this proceeding about?

1. GNL Developments Pty Ltd (the ‘Applicant’) seeks to review the decision of the Monash City Council (the ‘Council’) to refuse to grant a permit for the proposed development of six dwellings on land at 9 Myriong Street, Clayton (the ‘review site’).
2. This proceeding is a repeat appeal, following the decision of the Tribunal in the matter of *GNL Developments Pty Ltd v Monash CC* [2019] VCAT 1647 to refuse to grant a permit for the proposed development of eight, three storey dwellings on the review site. Given the change in the proposal to one now comprising six dwellings, including a dwelling at two storeys in height, this is a correcting repeat appeal, and I need to give weight to the previous Tribunal decision, as guided by the usual repeat appeal principles espoused in numerous previous decisions of the Tribunal.[[2]](#footnote-2)
3. The Council’s grounds of refusal raise concerns with the impact of the proposal on the surrounding neighbourhood character and desired future neighbourhood character, the level of compliance with the zone and various standards and objectives of Clause 55, the extent of landscaping proposed, and that the proposal is an overdevelopment of the site. The Applicant relies on grounds that essentially seek to refute the Council’s grounds of refusal.
4. The issues or questions for determination are:
	1. Is the proposal an appropriate response to the surrounding neighbourhood character?
	2. Will there be any unreasonable off-site amenity impacts?
	3. Is an appropriate level of internal amenity achieved?
	4. Does the proposal appropriately provide for car parking and traffic movements?
5. The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the Monash Planning Scheme, I have decided to set aside the Council’s decision, and direct the grant of a planning permit subject to conditions. My reasons follow.

## Is the proposal an appropriate response to the surrounding neighbourhood character?

1. The land is identified within the Residential development framework map at Clause 21.04-1 of the Monash Planning Scheme as being within the boundaries of an activity centre, and also as Residential land within the Monash National Employment Cluster, which is the key nominated Housing Diversity Area within the Monash municipality. As such, the review site is subject to a range of policies at a State level that seek to encourage the achievement of urban consolidation and greater housing diversity in well serviced locations within the established suburbs of Melbourne.
2. The following part of the overview at Clause 21.04-1 is relevant to the review site.

Monash is committed to managing residential growth to ensure it is directed to neighbourhood and activity centres that are well serviced by public transport, retailing, community facilities and employment opportunities. A significant opportunity exists to increase residential densities around the Monash National Employment Cluster to provide housing close to jobs.

1. The review site is also subject to the following policies at Clause 21.04-3:
* To locate residential growth within neighbourhood and activity centres, the Monash National Employment Cluster and the boulevards (Springvale Road and Princes Highway) to increase proximity to employment, public transport, shops and services. This will assist to preserve and enhance garden city character and special character in the balance of the municipality.
* To encourage the provision of a variety of housing types and sizes that will accommodate a diversity of future housing needs and preferences that complement and enhance the garden city character of the city.
* …
* Direct more intensive, higher scale development to neighbourhood and activity centres that are well serviced by public transport, commercial, recreational, community and educational facilities.
* Support substantial residential growth within the Monash National Employment Cluster to provide housing closer to where people work and study.
1. The Council’s Residential Development and Character Policy at Clause 22.01 of the Monash Planning Scheme places the review site within a Housing Growth Area – Clayton Activity Centre and Monash National Employment Cluster. The following policy guidance is provided for this area at Clause 22.01-4.

The scale of new residential development will generally comprise larger footprint apartment development of a high-quality design and finish. Some infill town house and unit development will also occur.

Where possible on larger sites, developments will be multi-level, and set in open gardens. Although setbacks from all boundaries will be less than is common in other parts of Monash, the developments will ensure the incorporation of well-maintained landscaping to address the garden city character, albeit in a more urban form.

1. This policy guidance is assisted by the application of the Residential Growth Zone Schedule 3 (RGZ3) to the review site and surrounding properties. This zone applies a building height limit of 13.5 metres. The Schedule to the RGZ contains the following design objectives.

To facilitate housing growth in the form of apartment developments of a high quality design and finish.

To ensure developments are constructed within an open garden setting through the retention and planting of vegetation, including canopy trees.

To ensure that the height, scale and form of development respects any sensitive residential interfaces and minimises the appearance of visual bulk.

1. Finally, on 28 January 2020 the Monash City Council adopted the *Clayton Activity Centre Precinct Plan* (City of Monash, January 2020), which identifies the review site as being within a ‘residential intensification’ precinct, where development of 3 to 5 storeys (10-16 metres) in height is encouraged. Land to the rear of the review site, which fronts North Road, is identified for a preferred building height of 6 storeys (19-22 metres). While this strategic document has not, as yet, been progressed to a planning scheme amendment, and therefore limited weight can be placed on this strategy, it is informative to understand that the Council intends to create an opportunity for even more intense residential development in this neighbourhood.
2. Given this strategic context, it is not surprising that the previous Tribunal decision strongly supports the construction of a three storey development on the review site, as set out in the extract below.

[37] There is no debate about the strategic support for residential redevelopment. Additional and diverse housing types on this site is supported by State and local policy that seeks such outcomes in locations in proximity to services, employment, public transport and infrastructure. The inclusion of the site in the RGZ indicates that this is an area where more intense housing and change in built form is sought. Amendment C125 to the Planning Scheme and the adopted Council Monash Housing Strategy 2014 were not relied on in submissions of the parties. In any event, I note that the review site is included in Category 3: Monash National Employment Cluster where housing change and diversification are sought, an outcome consistent with the current RGZ3 zoning of the land. Council says this is not a case where the built form should respond to existing character. I agree.

[38] I have expressed concern about various elements of the design response but do not take issue per se with the three storey height or the development extending deep into the site. In an area where change is sought and in a zone where four storey height is anticipated, increased building height and extent is to be expected.

1. In this current proceeding, the Council also supports the three storey height of the proposed development. However, the Council has concerns with the character impacts of the proposed built form that are nuanced, and somewhat difficult to understand. The relevant paragraphs from the Council’s written submission are set out below.

68. Council does not take issue with the height of the proposal. Rather, it is the presentation of the development to Myriong Street that is poorly resolved and lacks positive interaction with the street.

69. The massing of the proposal is ‘busy’, employing a number of materials and other elements that combine to create a convoluted built form outcome. It lacks the necessary coherency and finesse to deliver an acceptable building. The mix of materials and finishes includes face brickwork at ground floor, rendered elements and timber cladding at the upper levels along with a flat roof form. These treatments further exacerbate the bulky and box-like presentation of the development. In particular, the use of the same external material for the first and second floors of Dwelling 1 serves to highlight its scale and visual dominance, losing the impact of the setback. The complicated expression of the proposal is exacerbated by the ‘stepped’ approach to Standard B17 compliance at the Subject Land’s side boundaries.

70. The design involves a bank of garages at ground floor with a common driveway running along the western boundary. The first floors will then be cantilevered over the driveway, essentially creating a large under-croft area along the length of the site that, in combination with the strong framing element, results in the building appearing to stretch broadly from the western boundary across the Subject Land’s frontage.

71. The overall impression is of a large, block-like structure stepping to each side boundary. This element of the design was criticised by the Tribunal in the Previous Decision and has not been successfully addressed. In Council’s view, the presentation to the street remains too robust and is a poor design outcome. The RGZ3 decision guidelines require consideration of whether a proposal includes significant breaks and recesses in the building massing to avoid large block like structures dominating the streetscape. The proposed design does not achieve this.

1. The Council further submits that the proposed development does not sufficiently contribute to the surrounding landscape character, and that the proposed site coverage, at 61.2%, is too high.
2. I observed above that the Council’s concerns are difficult to understand. As one example, they oppose how the elevations are ‘busy’ through the use of a variety of materials, but then single out for criticism the elevation where the one material is used on the first and second floors of Dwelling 1, which they say highlights its scale and visual dominance. Further, while they support the concept of three storey development on the review site, they also oppose the inevitable built form consequences of inserting a three storey form into this context.
3. I am not persuaded by the Council’s submissions, and instead find that the proposed development is an appropriate response to the preferred future character of this area, the guidance provided by the Monash Planning Scheme, and the Council’s strategic intent for this locality. I make this finding for the following reasons.
4. The Council’s key concern appears to be in relation to the scale and bulk of the proposal and how this has been impacted by various design choices, which include the use of materials, the built form that extends over the common driveway area, the continuous three storey form and lack of a central break, and the stepped setbacks to the side boundaries in response to Standard B17. A key starting point in assessing the proposed built form is to appreciate how it responds to the strategic intent for the future character of this locale. The Monash Planning Scheme currently encourages development of up to 13.5 metres in height on the review site and surrounding properties. The proposal that is before me represents a moderated response to this opportunity, by proposing a three storey scale rising to around 9.1 metres in height. It also proposes a lower two storey scale at the rear of the review site. This reduces the length of the upper floor to around 30.3 metres in length. In my view, the design choices to propose a three storey scale where four storeys is encouraged, and a shortened third storey that does not extend into the rear of the review site, is an appropriate alternative approach to the encouragement for a break in the built form, as encouraged by the decision guidelines in RGZ3.
5. In any case, the encouragement within RGZ3 for a break is in order to avoid buildings that dominate the streetscape, as set out below.

Include significant breaks and recesses in building massing, is designed to avoid large block like structures dominating the streetscape.

1. As such, building breaks and recesses are sought in order to avoid large front facades that dominate the streetscape. In respect of the proposed development of the review site, that potential domination is avoided by the development of a single allotment that results in a narrow profile of built form, that reflects the rhythm and spacing of dwellings in the existing streetscape.
2. In respect of the other built form concerns identified by Council, I do not share the Council’s concerns, for the following reasons:
	1. On my assessment the range of materials that are proposed successfully ‘breaks down’ or articulates the extent of built form that is proposed on the review site into a series of individual elements that will provide an appropriate response to this neighbourhood. The use of bricks at the ground floor and selective parts of the first floor, timber cladding and rendered elements on the upper levels, are combined in the proposed elevations to create a visually interesting form, that will accentuate the subtle changes in setbacks at each level.
	2. The manner in which the first floor overhangs part of the common driveway at ground level is appropriate given the extent of increased intensity of residential development that is encouraged in this neighbourhood. The first floor overhang of the common driveway is setback behind the front façade of Dwelling 1, so as to reduce its prominence in the streetscape, and allow the planting of canopy vegetation either side of the common driveway in the front setback. Further, the manner which this first floor overhang has been arranged down the length of the western boundary of the review site is responsive to the changing context to the west. The overhang of the common driveway is widest opposite the side elevation of the adjacent dwelling, has an increased setback adjacent to a neighbouring area of secluded private open space, and disappears entirely adjacent to the neighbouring rear yard environment. Finally, the manner in which the proposed Dwelling 1 presents habitable room windows at ground, first and second floors overlooking the street, as well as a balcony at first floor level, provides a sufficient level of activation and surveillance of the street. This revised design response addresses a particular criticism of the previous Tribunal decision.
	3. The stepped setbacks at each level in response to Standard B17, is an inevitable consequence of seeking to fulfill the Council’s vision for more intense residential development, in a neighbourhood with standard residential lot widths. In this proposal, the potential negative consequences of a rigid compliance with Standard B17 is avoided, by the extent of articulation that is provided within the two side elevations. This level of articulation is provided by the changes in materials referred to above, a range of setbacks from each boundary at each floor level, and a varied design response that sees some first floor balconies face east, and some face west.
3. During the course of the hearing, I was also advised of the decision of the Tribunal to refuse to grant a permit for a development of seven dwellings in a three storey building in a similar layout to that which is before me, on land nearby at 3 Myriong Street. The relevant Tribunal decision is *Yang v Monash CC* [2019] VCAT 1677. I have the benefit of having received the plans that were before the Tribunal in that proceeding. I distinguish the proposal that is before me with that before the Tribunal at 3 Myriong Street, with regard to the following differences:
	1. The proposal at 3 Myriong Street had a higher proportion of hard paving, and thus reduced landscaping opportunities, by splitting the common driveway and pedestrian access across the two side boundary interfaces. In difference, in the proposal that is before me, appropriate landscaping opportunities are achieved to the more sensitive interface to the east by combining the pedestrian access and common driveway on the western side of the review site.
	2. The proposal at 3 Myriong Street had no habitable rooms at ground floor, except for those that faced the rear boundary of that site. As such, it resulted in a poor presentation to and surveillance of the street, the common driveway and the pedestrian accessway.
	3. The proposal at 3 Myriong Street adopted a series of setbacks at first and second floors which were relatively unchanged along the length of that site, and as such did not respond to the changing context of the abutting properties. In difference, the proposal that is before me responds appropriately to the changing context on the abutting properties, and provides a high level of articulation through a variation in side boundary setbacks, complemented with changes in materials and colors.
	4. While it is not a character consideration, the proposal for 3 Myriong Street also strangely separated the kitchen and dining area on the first floors of most townhouses, from the living areas and balconies on the respective second floors. This would have resulted in a level of internal amenity that is much poorer, compared to the proposal that is before me.
4. The Council is also critical of the extent of landscaping opportunities provided on the review site. However, the extent of landscaping opportunities to be expected on a site such as this, should be tempered by the other built form guidance that applies. This was relevantly explored in the Tribunal decision of *Ormond Road (Clayton) Pty Ltd v Monash CC* [2019] VCAT 1775, which includes the following extract.

[24] The policy context sets a new ‘garden city’ character of apartment buildings in open garden settings for this area. The Schedule’s design objectives and varied standards framed expectations for this ‘garden setting’. The varied standards anticipate 4 metre front setbacks, 3 metre rear setbacks, and 1 - 3 metre side setbacks depending on the siting of private open space. This is a modest garden setting compared to other parts of the municipality.

[25] I expect that the ‘ideal outcome’ would be four-storey apartment buildings setback 4 metres from the street and with 3 metre setbacks on side and rear boundaries. I say this because apartment buildings typically use the side and rear setbacks for private open space.

[26] However, the design objectives and varied standards of the Schedule are discretionary and other types of buildings can be acceptable.[[3]](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2019/1775.html?context=1;query=Ormond%20nelthorpe;mask_path=au/cases/vic/VCAT" \l "fn3) Such buildings need to demonstrate that their design and siting respond to the desired garden setting to an acceptable degree.

[27] Apart from this, it is reasonable to consider variations from the Schedule’s standards given the site’s location on a main road and its proximity to the activity centre. This street’s robust setting coupled with convenient access to the activity centre favours a greater density of housing and larger, more intense buildings.

[28] In this context, the most obvious concessions sought by the applicant are to forego the maximum height allowable under the Schedule and to forego the Schedule ’s private open space standard in favour of balconies. Both concessions are permissible yet have different consequences. The Schedule’s side setback standards influence the concession on height and has the benefit of reducing the building’s visual dominance amongst its existing neighbours. The concession on open space reduces the space along side boundaries as no landscaped ground floor courtyards are required.

[29] The issue that I must resolve is whether these concessions deliver a building that responds to the desired garden setting to an acceptable degree.

…

[39] I find that the landscaping in the front and rear setbacks must be considered to meet the design objectives of an open garden setting given that they generally meet the varied setback standards. Apart from this, Mr Patrick’s landscape plan shows three trees in the frontage and two in the rear setback, all of which can reach a height of 6-10 metres at maturity. This exceeds the varied standard for landscaping. I also find that the trees and other plantings proposed along the western boundary are an acceptable response to the design objectives as they can provide a garden setting along the pedestrian path.

[40] However, I am not persuaded that the planting along the eastern boundary is an acceptable response to the design objectives. A 1 metre wide landscape strip is proposed between the driveway and the boundary fence. A hedge of Bush Christmas Lilly Pilly clipped to 2-3 metres high is proposed in this strip except at terminating the site’s rear corner where a canopy tree is proposed.

[41] I find that this would have been acceptable if the cantilevered balconies and privacy screens of the five side-loaded dwellings did not extend so close to the eastern boundary. As mentioned earlier, the outer edges of these balconies are setback between 1.8 metres and 2.4 metres with the outwardly angled fins reducing this space to 1.2 metres and 1.8 metres.

[42] I find that this creates an uncomfortable relationship between the hedge and the balconies. There is no ‘breathing space’ to create a sense of proportion between these two elements. It has the effect of squeezing a landscape feature between the building and the fence. This fails to meet the design objective of an ‘open garden setting’ and is an unacceptable feature of the proposal.

1. While that decision ultimately found the landscaping response to be unacceptable, it appropriately identified that the expected landscaping outcome should be guided by the setbacks that are anticipated, and indeed encouraged, in the RGZ3. In the design that is before me, the proposed development incorporates a front setback of between 4.0 and 5.1, which either meets or exceeds the varied front setback standard at RGZ3. The landscape plan prepared by Mr Patrick depicts the planting of two canopy trees within this front setback. A rear setback of 3.0 metres is proposed, in which three canopy trees of a mature height of between 6.0 and 11.0 metres are proposed. Further, while this is not a determinative factor, the review site also benefits from the siting of a substantial street tree in front of the site.
2. The side boundary setbacks proposed for the review site are less generous. This is to be expected on a narrow suburban lot such as this, where the Council’s policies encourage an intense form of development. In this proceeding, I form a different view to that expressed in *Ormond Road (Clayton) Pty Ltd v Monash CC* [2019] VCAT 1775, and find that the extent of landscaping proposed along the respective side boundaries is appropriate. I make that finding having regard to the extent of landscaping opportunities created on the site as a whole, both in respect of the amount of land set aside for landscaping, and the extent of tree planting depicted on the landscape plan. I also make that finding having regard to the context provided by the adjoining properties, which each have an extensive amount of on boundary construction, as well as a limited amount of landscaping along their respective side boundaries.
3. As a final part of my neighbourhood character assessment of this proposal, it is appropriate to return to the previous Tribunal decision for the review site, and understand the specific neighbourhood character concerns set out in that decision. The relevant extract is set out below.

[27] I acknowledge the RGZ3 anticipates change and built form that is different to the existing residential character. The design objectives, variations to the requirements of clause 55 and the decision guidelines in Schedule 3 of the RGZ provide guidance on the design response expected as part of this change together with objectives and non-varied standards of clause 55.

[28] Although the varied front setback of 4 metres is met, I am not satisfied that the presentation of the development to the street is acceptable.

[29] The objective of clause 55.02-5 is to integrate the layout of the development with the street and the standard seeks dwellings to be oriented to front existing streets. The ground floor front façade is the side wall to the garage for dwelling 1. It presents with a brick wall containing two highlight windows. This presentation results in a largely blank wall, lacks interaction with the street and makes no contribution to public safety through passive surveillance. A first floor, obscure glazed bathroom window does not contribute to a positive front façade.

[30] I acknowledge the first floor balcony and upper level windows of dwelling 1 facing the street will provide passive surveillance.

[31] The incorporation of a first and second floor cantilevered over the driveway results in a wide ground level void (approximately 5.6 metres width). The combination of this void and the blank ground level wall results in inadequate interaction and integration to the street. It represents an urban design outcome that fails to contribute positively to the street.

[32] The design objectives of RGZ3 seek development to be within an open garden setting and decision guidelines refer to well located open space to provide for large tree planting and a mix of vegetation in front, side and rear setbacks. This objective builds on the garden city character expressed in local policy as a key priority for all development in the municipality. There is a garden area at the termination of the driveway and a landscape strip along the western boundary. Although planting can occur in these areas, the contribution such planting will make to an open garden setting is compromised by the extent of cantilevered elements that extend to within 1.5 metres of the western boundary and the width of the driveway. The 2 metre setback along most of the eastern boundary provides only limited space for planting given this space also accommodates a pedestrian pathway. The front setback provides adequately for landscaping.

[33] The decision guidelines in the RGZ3 seek to include significant breaks and recesses in building massing and a design that avoids large block like structures dominating the street. The front elevation presents with a number of flat roofed elements that appear quite ‘box like’ and this appearance is not assisted by an absence of a clear designation of varied external finishes. For example, the top two levels of the west elevation of dwelling 1 appear to be of the same external material and, although the top level is recessed, the finishes fail to accentuate this. The lack of compliance with the side setback standard to the eastern boundary, a matter I address later in dealing with external amenity, means the width of the building across the site combined with the limited landscaping opportunities to side boundaries contribute to the appearance of a dominant built form in the streetscape.

1. I am satisfied that the amended proposal that is now before me has appropriately responded to the concerns identified in the previous Tribunal decision. I make this finding for the following reasons:
	1. The presentation of the development to the street is now much improved, comprising of a bedroom, a study and a front door in the ground floor front façade, multiple windows to an open plan living area and a balcony at first floor level, and two further bedrooms at second floor level. Combined, these windows and spaces will provide a high level of activation and surveillance of Myriong Street. Further, as the front façade facing Myriong Street provides such an engaging elevation, the void created by the floors that overhang the common driveway does not have such a negative urban design outcome. In part this is also assisted by a reduction in the width of the overhang, with the first floors no longer extending to within 1.5 metres of the western boundary.
	2. The proposal now provides opportunities along the eastern boundary for canopy tree planting, that are not constrained by a common pathway, which is no longer sited adjacent to this boundary. For the reasons set out above I am now satisfied in relation to the landscaping opportunities provided across the review site as a whole.
	3. For the reasons set out above I am satisfied that the proposal responds appropriately to the guidance provided in RGZ3 relating to building breaks and recesses. The proposed elevation facing Myriong Street now has a more refined set of variations in colors and materials that accentuates the articulation provided in this façade.
	4. The side boundary setback standard is now achieved, with the previous eastern boundary second floor setback of 2.35 metres now increased to a minimum of 3.6 metres. This increased setback, combined with a reduction of the overhang above the common driveway, and a doubling of the previous first floor eastern boundary setback to Dwelling 1 (from 1.42 metres to 2.84 metres) means that the proposal no longer, in my view, has the appearance of a dominant built form in the streetscape.
2. For these reasons I find that the proposal is an appropriate response to the future character of this part of the Clayton Activity Centre, and the guidance provided by the Monash Planning Scheme.

## Will there be any unreasonable off-site amenity impacts?

1. The Council submits that the proposed development will result in unreasonable levels of visual bulk to the properties to the east and west of the review site. They form this view having regard to the length of the built form proposed on the review site, the extent of on-boundary construction at ground level, the setbacks proposed, and the context provided by the abutting sites.
2. I am not persuaded by these submissions, and instead find that the proposed development is an appropriate built form response to the context provided by the adjoining properties. I make this finding for the following reasons. The adjoining property to the west of the review site contains six dwellings, and includes two garages built to the common boundary of the review site, and two dwellings with minimal side boundary setbacks to two storey forms. Given the encouragement for four storey development within the RGZ3, the siting of a well articulated three storey development adjacent to the existing garage walls on boundary and two storey dwellings on the adjoining property to the west, is an appropriate design response.
3. There are also two areas of secluded private open space on the adjoining property to the west at the immediate interface with the review site. To that area which is sited roughly in the middle of the length of the adjoining property, the proposed development on the review site responds with a more generous first floor setback of 5.0 metres. While a first floor balcony is located within this setback, and the second floor partly overhangs this balcony, I consider that the range of setbacks provided adjacent to this adjoining area of secluded private open space are appropriate, and will not result in an unreasonable level of visual bulk. I make this finding also having regard to the reasonable amenity expectations that should occur in a neighbourhood where four storey development is currently permissible, and where strategically the Council is currently advancing a revised set of planning controls that allows up to five storey development.
4. The remaining area of secluded private open space on the adjoining property to the west is sited in the very rear of that site, adjacent to a proposed two storey form on the review site, with setbacks of 3.5 metres at ground floor and 5.0 metres at first floor. These are very generous setbacks that will not cause an unreasonable level of visual bulk to this adjacent area of secluded private open space.
5. To the east the existing single neighbouring dwelling presents a direct interface comprising a driveway, beyond which is a wall with only a single corner window. At the end of the driveway is an outbuilding that is built to the common boundary with the review site for a length of 12.0 metres. Beyond and to the rear of this outbuilding is a large area of secluded private open space. The proposed development of the review site responds to this context by concluding the extent of the proposed second floor not far to the rear of the siting of the outbuilding on the adjacent property. As such, views to the full three storey form will be either from the driveway, the front yard, one corner window or from behind the outbuilding on the adjoining property to the east of the review site. From these locations, what will be visible is a well articulated three storey form, with a good variety and composition of colors and materials, and with setbacks that comply with Standard B17.[[3]](#footnote-3) In this neighbourhood, that represents a moderated building response that will not result in unreasonable levels of visual bulk to the adjoining property.
6. While it is not raised by the Council, it is appropriate to note that I do not consider that an unreasonable level of visual bulk would be caused to the adjoining property to the rear of the review site. I make this finding having regard to the level of articulation and range of setbacks are provided in the proposed two storey form for the rear of the review site.
7. Again, it is also appropriate to have regard to the concerns raised in the previous Tribunal decision, as set out below.

[34] Schedule 3 to the RGZ varies the standard relating to side and rear setbacks, although in the case of side setbacks repeats what is in clause 55.04-1. The proposal fails to meet the side setback standard to the eastern boundary. At first floor the variation is relatively minor but for the top floor the setback of between 2.3 and 3.1 metres is less than the approximate 4 metres required to comply with the standard. I am not satisfied that the variation from the standard is acceptable. I find the eastern elevation presents with a relatively sheer form and does not minimise the appearance of visual bulk when viewed from the east, contrary to the design objectives in RGZ3. There is inadequate opportunity in the setbacks to provide for screening trees as sought in the decision guidelines. In addition, anticipating a potential future development on the single house site to the east, in the long term and in line with the change sought for the area, this wall could compromise the development opportunities of that site.

[35] To the west, the minor variations to side setback standards are of less concern. However, I find that the layout presents to the west with substantial built form including screened balconies to within 1.5 metres opposite a sensitive space. Although I consider that long built form extending deep into the site is an acceptable outcome in the RGZ where increased residential density and intensity of built form is supported, such form must respond to context. In this case there is a multi-dwelling development to the west that includes a central portion of secluded private open space. This is a context, unlikely to change in the short term given the multiple ownerships, and one which is sensitive to the appearance of visual bulk and shadow. I find it unacceptable that the development results in additional shadow to the central open space (resulting in non-compliance with the standard) and will create a ‘crowded’ design adjacent to this space. Landscaping that could soften the built form when viewed from the adjoining secluded private open space will be compromised, in my view, by the balconies extending over the driveway. The concept landscape plan tendered at the hearing does not change my view on this matter.

1. I find that the proposed development has appropriately responded to the concerns identified in the previous Tribunal decision, having regard to the following:
	1. The proposed development now interfaces to the adjoining property to the east with second floor setbacks that comply with Standard B17, and with an eastern elevation that no longer presents as a sheer built form. Further, opportunities are created along the eastern boundary for four canopy trees that will grow to a height at maturity of 8.0 metres, in addition to the canopy trees proposed at the front and rear of the review site. As a result of these changes, I find that the proposal would no longer compromise the development opportunity presented to the adjacent site to the east.
	2. The setbacks to the western boundary have also increased, with the screened first floor balconies now setback between 2.4 and 2.95 metres from the western boundary adjacent to the neighbour’s area of secluded private open space. The plans substituted at the commencement of the proceeding depicts an increase in shadows to the ‘central open space’ on the adjoining property to the west of the review site, using the description applied in the previous Tribunal decision. This was raised with Mr Bowden during the course of the hearing. In response, Mr Bowden proposed that a condition of planning permit require an increase in the setback to the second floor bedrooms to Dwelling 4 & 5, to provide a setback from the western boundary of 5.25 metres. At this setback, no additional overshadowing at 10:00am at the equinox would occur to the area of secluded private open space on the adjoining property to the west, and as such the requirements of Standard B21[[4]](#footnote-4) would be achieved. This will require a shuffling of the positions of the bedrooms and bathrooms at second floor, which I was assured could be achieved.
2. Overlooking from the proposed development is appropriately addressed by way of screening of windows and balconies where appropriate. Where the previous Tribunal decision was critical as to the height of the proposed screening, the amended proposal that is now before me depicts screening heights that are now largely consistent with that required by the relevant standard.[[5]](#footnote-5) The one exception to this observation is the eastern edge of the first floor balconies to Dwellings 2 & 3, which is to be treated with a planter box. While this planter box does sufficiently restrict overlooking in the existing context, it would allow views to a possible future development scenario on the adjoining property to the east. As such, I consider that a condition of permit should require a shelf or angled screen to be added to this planter box, or the planter box widened, to further restrict the downward viewing arc from these balconies.
3. I have already addressed above the overshadowing that will affect the area of secluded private open space located roughly mid-block on the adjoining site to the west of the review site. The area of secluded private open space at the rear of the adjoining property to the west, will not receive any additional overshadowing at the equinox from the proposed development of the review site. The adjoining property to the east of the review site will receive a small amount of additional shadowing at the equinox to their area of secluded private open space. However, the extent of the area of secluded private open space that will be subject to additional shadowing, is well within that permitted by the relevant standard.[[6]](#footnote-6)
4. There are no north facing windows on adjoining properties that are sited such that an assessment under Standard B20 at Clause 55.04-4 of the Monash Planning Scheme applies.
5. For these reasons I find that the proposed development will not result in any unreasonable levels of off-site amenity impacts to the surrounding properties.

## Is an appropriate level of internal amenity achieved?

1. The Council submits that the proposed development will fail to provide for an appropriate level of internal amenity, having regard to the following matters:
	1. That the proposed dwelling entries to Dwellings 2 to 6 inclusive, being located under the protruding first floor form, are not readily identifiable and do not provide for an appropriate level of safety;
	2. The lack of north facing windows into living areas in each of the proposed dwellings, and extent of screening that would restrict daylight entry;
	3. The extent of storage areas provided for Dwellings 1 to 5; and,
	4. The capacity of the waste storage area.
2. I am not persuaded by these submissions, and instead find that the proposed development will provide for an appropriate level of internal amenity for future residents. I make this finding for the following reasons, focussing on the concerns raised by Council.
	1. Given the manner in which the proposed development of the review site is arranged, it is evident that the entries to the dwellings sited behind Dwelling 1 are to be accessed via the common driveway. Once within this common driveway environment, the front doors to each of the respective dwellings are easily identifiable, and given their position under the overhanging first floors, they are each provided with a high level of weather protection. Given the extent of activity, and potential activity, that could occur along this common accessway arising from the entries to each of the five dwellings, I am satisfied that an appropriate level of safety will be provided to this part of the review site. Further, the amended design proposed since the previous Tribunal decision, where the common driveway and the pedestrian access points to each of the proposed dwellings is now combined, appropriately addresses a number of the concerns raised in the previous Tribunal decision regarding the visibility of the front doors, and surveillance of the separate pedestrian pathway that was proposed at that time.
	2. While I accept that no north facing living room windows are provided to Dwellings 1 to 5 inclusive, I consider this largely to be a result of the north-south orientation of the review site, where the two long side boundaries face east and west. It is my finding that the proposed development overcomes this lack of north facing windows to Dwellings 1 to 5 inclusive, by providing open plan living areas to each of the dwellings at first floor level, each having a dual aspect by facing east and west. As such, these living areas will receive good solar access in both the morning and afternoon, which assists to compensate for the lack of a northern orientation. Having regard to this design aspect, I am satisfied that the proposal has now addressed the criticism identified in the previous Tribunal decision. In particular, I note that the proposed dwelling sited at the very rear of the review site now has excellent northern orientation, where previously there was only a single first floor north facing window in that dwelling. In addition, Dwelling 5 has taken the opportunity that was identified in the previous Tribunal decision for a north facing window at the top floor of that dwelling.
	3. The Council has drafted a permit condition to address the provision of storage areas for certain dwellings, and I accept that such an approach is an appropriate way to address this concern.
	4. I have not been persuaded by the Council that there is inadequate space within the waste storage area at the end of the common driveway for the needs of the future residents of the review site, or that there is not sufficient space to expand this waste storage area if necessary. I have also not been persuaded that the Council could not collect waste kerbside in Myriong Street, or if collection were to occur via a private waste collector, that such collection could not occur while a vehicle is either propped in Myriong Street, or the start of the common driveway, and reverse back out into Myriong Street. To be clear, I consider that the suggestion that a private waste vehicle be required to turn around on a site dimensioned such as this, to be an onerous expectation of Council that is not realistic or reasonable.
3. The previous Tribunal decision was also critical regarding the extent of screening to balconies and windows on each of the proposed dwellings. In the amended proposal that is now before me, this is addressed in Dwellings 1 and 6 by the inclusion of additional rooms at ground floor level, that have generously proportioned windows that are unscreened. In the remaining four dwellings I am satisfied that the additional internal width now provided to each of the proposed dwellings, provides an opportunity for increased amenity in each of the main living areas, as well as additional windows to provide for daylight and solar access, as well as an outlook. On balance, having regard to the extent of changes now made to the proposal that is before me, I am satisfied that an appropriate level of internal amenity is now achieved.

## Does the proposal appropriately provide for car parking and traffic movements?

1. The proposed development seeks to provide one car parking space for each dwelling. As four of the proposed dwellings comprise two bedrooms each, and two of the proposed dwellings comprise three bedrooms each, the proposal seeks a reduction of two resident car parking spaces. No visitor car parking is required under the Monash Planning Scheme.
2. The Council opposes the extent of car parking reduction that is sought, for the following reasons:
	1. The site is distant from an activity centre and available alternative transport options;
	2. The open studies could be enclosed in future and used as additional bedrooms;
	3. The census data relied upon by Mr Hancox is outdated and does not reflect recent development in this locality;
	4. On-street car parking in Myriong Street is heavily restricted, due to an existing parking issue in the street; and,
	5. Future residents of the proposed development will not have access to parking permits on street.
3. I am not persuaded by these submissions, and instead find that the proposed parking reduction is appropriate. I make this finding for the following reasons. The proposal seeks a reduction of two car parking spaces, being one car space for each of the proposed three bedroom dwellings on the review site. I am satisfied, having regard to the census data relied upon by Mr Hancox, that there are a relatively high proportion (around 70%) of three bedroom households in this location, that would only rely on one car parking space. I am also satisfied that the review site is proximate to a range of public transport options, including a high number of bus routes that operate along North Road, some of which provide direct access to the nearby railway station.
4. To the extent that Council is concerned that the ground floor studies to Dwellings 1 to 5 could be converted into bedrooms, I consider this to be unlikely given the dimensions of these spaces (with the widest ones at 2.54 metres wide), and the sliding glazed doors proposed between these spaces and the respective garages. In any case, I need to assess the proposal that is before me, which are for studies that are open to the stairwells and corridors. I do not consider it reasonable to treat these studies, as presently designed, as likely to be additional bedrooms.
5. I note that the Council does not raise any other traffic related concerns. Having regard to the evidence of Mr Hancox, I find that the proposed development appropriately provides for turning movements within the review site, and entry and exit movements onto Myriong Street.
6. For these reasons I find that the proposed development appropriately provides for car parking and traffic movements.

## Are there any other issues?

1. Finally, Council is also critical of the design and location of the site services within the front setback. While I acknowledge that on occasion these services can become unsightly, in this case it is proposed to site the electrical meter box and the gas meters along one side boundary, and behind the alignment of the front façade of the proposed development of the review site. This will assist to reduce their visual presence in the streetscape. While the water meters and letterboxes remain sited close to the front boundary of the review site, I do not consider that their combined presence will result in an unreasonable outcome for this neighbourhood.

## Conclusion

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

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

# Appendix A – Permit Conditions

|  |  |
| --- | --- |
| Permit Application No | TPA/51431 |
| Land | 9 Myriong Street, Clayton |

|  |
| --- |
| What the permit allowS |
| In accordance with the endorsed plans:* To construct two or more dwellings on a lot
* To reduce the standard car parking requirement
 |

## Conditions

1. Before the development starts, 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 plans must be generally in accordance with the plans prepared by Bello Design Group, Plan no. TP01-TP17 dated 5 July 2021 but modified to show:
	1. The provision of a 5.25 metre setback between the western boundary of the review site and the second floor west facing bedrooms in Dwellings 4 & 5.
	2. Provision of a shading device to the west facing first floor living room windows of Dwellings 4 & 5.
	3. Provision of additional screening, possibly in the form of a shelf or an angled screen, to further restrict downward views from the first floor east facing balconies to Dwellings 2 & 3, into the adjoining property to the east.
	4. A minimum of 6 cubic metres of externally accessible storage for each dwelling (with dimensions provided).
	5. Details (height and finishes) of the proposed electrical meter box.
	6. Letter boxes to be less than 0.9 metres in height, or relocated outside of the identified pedestrian sight triangles.
	7. All windows and balconies to be screened in accordance with Standard B22 of Clause 55.04-6.
	8. Further details of proposed materials including ‘feature timber cladding or similar’.
	9. A Landscape Plan in accordance with Condition 3 of this Permit.
	10. A Sustainable Design Assessment in accordance with Condition 4 of this Permit.
	11. A Waste Management Plan in accordance with Condition 5 of this Permit.
	12. A Tree Management Plan in accordance with Condition 6 of this Permit.

all to the satisfaction of the Responsible Authority.

1. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
2. Concurrent with the endorsement of any plans pursuant to Condition 1, 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. When endorsed, the plan will form part of the Permit. The Landscape Plan must be generally in accordance with the Landscape Plan prepared by John Patrick Pty Ltd dated July 2021, except that the plan must show:
	1. Any changes as required by Condition 1 of this Permit.
3. Before the development commences, an amended Sustainable Design Assessment to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Design Assessment will be endorsed and will form part of this permit. The amended Sustainable Design Assessment must be generally in accordance with the Sustainable Design Assessment prepared by Star Rating dated 22 September 2020 but modified to include or show:
	1. Development Plans attached to the assessment which have been assessed as part of the report;
	2. Any changes as required by Condition 1 of this Permit.

The provisions, recommendations and requirements of the endorsed Sustainable Design Assessment must be implemented and complied with to the satisfaction of the Responsible Authority.

1. Concurrent with the endorsement of any plans pursuant to Condition 1, a Waste Management Plan must be submitted and approved by the Responsible Authority. The plan must be generally in accordance with the plan prepared by TTM dated 28 September 2020, but showing to the satisfaction of the Responsible Authority:
	1. Reference to AS5810-2010 compostable bags removed;
	2. Scaled plans including cleaning / washing provision, drainage and screening / odour control;
	3. Waste collection to occur either by Council or a private contractor. If a waste vehicle is to enter the site, it is not required to turn around within the site and exit in a forwards direction;
	4. Council User pays At-call hard waste service may be accessed subject to conditions;
	5. Information regarding the E-waste ban to landfill must be given to occupants by the building operator as part of the Communications Strategy. Signage should also be displayed in the waste compound regarding the e-waste ban to landfill;
	6. Signage to be displayed in the waste compound regarding the use of local textile charity bins instead of waste/recycling bins for clothing.

The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

1. Concurrent with the submission of amended plans required by Condition 1 and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and approved by the Responsible Authority. The TMP must be prepared by a suitably qualified and experienced Arborist and must set out recommendations and requirements in relation to the management and maintenance of Tree Nos. A and B (as identified in the Arborist Report submitted with the application, prepared by PSY Inv Pty Ltd).

The TMP must be approved by the Responsible Authority prior to the commencement of any works, including demolition and/or levelling of the site. 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:

* 1. A Tree Protection Plan drawn to scale that shows:
		1. Tree protection zones and structural root zones of all trees to be retained;
		2. All tree protection fenced off areas and areas where ground protection systems will be used;
		3. The type of footings within any tree protection zones;
		4. 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
		5. A notation to refer to the Tree Management Plan for specific detail on what actions are required within the tree protection zones.
	2. 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;
	3. Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority; and
	4. 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.

The recommendations contained in the approved tree management plan must be implemented to the satisfaction of the Responsible Authority.

1. Prior to the commencement of any site works (including demolition and excavation), a Construction Management Plan must be submitted and approved by the Responsible Authority. No works are permitted to occur until the Plan has been endorsed by the Responsible Authority. Once endorsed, the Construction Management Plan will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
	1. Hours for construction activity in accordance with any other condition of this permit;
	2. Measures to control noise, dust and water and sediment laden runoff;
	3. Prevention of silt or other pollutants from entering into the Council’s underground drainage system or road network;
	4. Measures relating to removal of hazardous or dangerous material from the site, where applicable;
	5. A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
	6. Cleaning and maintaining surrounding road surfaces;
	7. A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves;
	8. Public Safety and site security;
	9. A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
	10. A Traffic Management Plan showing truck routes to and from the site;
	11. Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
	12. Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
	13. Contact details of key construction site staff;
	14. Any other relevant matters, including the requirements of VicRoads or Public Transport Victoria;
	15. Except with the prior written consent of the Responsible Authority, a requirement that construction works must only be carried out during the following hours:
* Monday to Friday (inclusive) – 7.00am to 6.00pm;
* Saturday – 9.00am to 1.00pm;
* Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings. This does not include excavation or the use of heavy machinery.);
* No works are permitted on Sundays or Public Holidays.

The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

1. The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.
2. Prior to the occupancy of the development, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority. The use of obscure film fixed to transparent windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.
3. 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.
4. All landscaping works shown on the endorsed landscape plan(s) must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.
5. 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.
6. 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.
7. Before the use starts or any building is occupied, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
	1. constructed to the satisfaction of the Responsible Authority;
	2. properly formed to such levels that they can be used in accordance with the plans;
	3. surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
	4. drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;
	5. line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority;
	6. Parking areas and access lanes must be kept available for these purposes at all times.
8. Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the Responsible Authority.
9. Low intensity / baffled lighting must be provided to ensure that car park areas and pedestrian accessways are adequately illuminated without any unreasonable loss of amenity to the surrounding area, to the satisfaction of the Responsible Authority.
10. Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
11. The site must be drained to the satisfaction of the Responsible Authority.
12. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
13. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing.
14. A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.
15. The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.
16. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
17. 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. Such as *Sprut Pty Ltd v Stonnington CC* [[2012] VCAT 1675](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2012/1675.html) and *K & B Reichart v Banyule CC and Ors* (1996/38819).  [↑](#footnote-ref-2)
3. As found at Clause 55.04-1 of the Monash Planning Scheme. [↑](#footnote-ref-3)
4. As set out at Clause 55.04-5 of the Monash Planning Scheme [↑](#footnote-ref-4)
5. Standard B22 found at Clause 55.04-6 of the Monash Planning Scheme [↑](#footnote-ref-5)
6. Standard B21 found at Clause 55.04-5 of the Monash Planning Scheme [↑](#footnote-ref-6)