# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

# administrative DIVISION

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| planning and environment LIST | vcat reference No.P1275/2018 Permit Application no.TPA/48365  |

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| CATCHWORDS |
| Application under Section 77 of the *Planning and Environment Act 1987* (the Act) to review a decision to refuse a permit. |

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| APPLICANT | Xiaojing Guo |
| RESPONSIBLE AUTHORITY | Monash City Council  |
| referral authority | VicRoads – Metropolitan South East Region |
| SUBJECT LAND | 193-195 Clayton RoadCLAYTON VIC 3168  |
| WHERE HELD | Melbourne  |
| BEFORE | Laurie Hewet, Senior Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 26 February 2019  |
| DATE OF ORDER | 17 April, 2019 |
| CITATION | Guo v Monash CC [2019] VCAT 570 |

# Order

1. Pursuant to section 127 and 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: | Jesse Ant Architects  |
| Drawing numbers: | TP00 to TP13 inclusive Amendment B  |
| Dated: | 01/10/2018 |

1. In application P1275/2018 the decision of the responsible authority is set aside.
2. In planning permit application TPA/48365 a permit is granted and directed to be issued for the land at 193-195 Clayton Road, Clayton in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* Construction of thirteen dwellings and alteration of access to a road in a Road Zone Category 1.

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| **Laurie Hewet****Senior Member** |  |  |

# APPEARANCES

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| For Applicant | Mr Andrew Clarke, town planner |
| For Responsible Authority | Ms Adrianne Kellock, town planner  |
| For Referral Authority  | No Appearance |

# INFORMATION

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| Land Description | The review site is located on the western side of Clayton Road just to the south of the intersection with North Road. It comprises two abutting lots with a total frontage of 36.58m, a depth of 42.52m and an area of 1555m2. A detached dwelling currently occupies each lot. A permit for a three storey apartment building had previously been issued by the Council for the review site but that permit was not acted on and has now expired. The site forms part of an established residential area. Single storey dwellings abut the review site to the north, west and south. A small shopping centre is located opposite the site on the eastern side of Clayton Road. Residential development in the immediate vicinity of the review site comprises mainly single and double storey detached dwellings dating from about the 1950’s and 1960’s. More contemporary medium density developments also form part of the area’s character.  |
| Description of Proposal | Construction of thirteen dwellings in two attached, three storey rows, located either side of a central driveway. A mix of two, three and four bedroom accommodation is proposed. Car parking in the form of single, double and tandem garages are proposed at the ground level. Living areas and bedrooms are located above in a reverse living arrangement.  |
| Nature of Proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit.  |
| Zone and Overlays | Clause 32.07: Residential Growth Zone (GRZ3)The land abuts a road in a Road Zone Category 1.  |
| Permit Requirements | Clause 32.07-5: A permit is required to construct two or more dwellings on a lot. A development must meet the requirements of Clause 55. Clause 52.29: A permit is required to create or alter access to a road in a Road Zone Category 1.  |

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

## What is this proceeding about?

1. This is an application to review the decision of the Responsible Authority to refuse permission for the construction of thirteen dwellings at 193-195 Clayton Road, Clayton. The Responsible Authority issued a Notice of Refusal to Grant a Permit on nine grounds that raise policy, character, amenity and detailed design issues
2. In broad terms the Council regard the proposal as a poor design that sets an undesirable precedent for the future development of this residential growth area.
3. Following the Council’s refusal of the application, the applicant has filed and served amended plans. I substituted the amended plans for the application plans at the start of the hearing.
4. The Council has advised that while it acknowledges that the amended plans include several design improvements it continues to oppose the grant of a permit. The Council now considers the proposal’s front façade treatment is acceptable in the streetscape, together with the front setback, front fencing and landscaping in the front setback.
5. The dispute between the Council and the applicant in this case is relatively confined. The Council acknowledges that the development of this site for medium density dwellings accords with the strategic direction provided by the planning scheme’s policy framework. Similarly, the review site’s area and configuration, and its proximity to a wide range of services and facilities renders it suitable as a site capable of contributing toward achieving housing diversity objectives.
6. The Council’s opposition to the proposal however stems from a concern that the proposal’s design does not achieve an acceptable standard in terms of responding to those provisions of the planning scheme that encourage site responsive designs that respect existing or preferred character, protect existing residential amenity and provide for acceptable levels of internal amenity.
7. Having considered the submissions and having inspected the review site and its broader neighbourhood I have concluded that the proposal is acceptable and that a permit should issue. My conclusion is influenced by what I regard as the overwhelming and unambiguous support offered by the planning scheme for developments of the type, scale, form and intensity reflected in the current proposal. The proposal is an acceptable response to those planning scheme provisions.
8. My reasons are set out below.

## is the proposal acceptable having regard to the SITE’S PHYSICAL and strategic CONTEXT?

1. Both the Council and the applicant provided me with detailed submissions outlining the relevant planning scheme provisions and describing the site’s physical context and that of the surrounding area.
2. There is no significant dispute between the parties about these matters and it not necessary for me to repeat any of that material other than to record that:
* State and local planning policy relevantly seeks to:
	+ Encourage residential consolidation of established urban areas;
	+ Encourage the design of energy efficient buildings;
	+ Ensure that development respects existing or preferred neighbourhood character;
	+ Ensure that development improves housing choice, makes better use of existing infrastructure and improves energy efficiency of housing;
	+ Achieve high quality urban design and architecture that reflects the particular characteristics, aspirations and cultural identity of the community;
	+ Encourage the provision housing to accommodate future housing needs and preferences of the local community;
* The site is located within the Monash Employment Cluster identified in Plan Melbourne and is proximate to several key regional assets including Monash Medical Centre, Monash University and the Clayton Major Activity Centre. The Employment Cluster is identified as one of the areas in which increased residential densities and housing diversity are encouraged[[2]](#footnote-2).
* The Monash Housing Strategy unhelpfully includes the review site in both a Category 8 area (Garden City Suburbs) and a Category 3 area (Residential Land in the Monash National employment Cluster). Different outcomes are contemplated for each category.
* To the extent that there is confusion created by the Monash Housing Strategy and the inclusion of the site is two different categories, the inclusion of the site in the Residential Growth Zone (RGZ3) clarifies to my satisfaction that this site forms part of a wider area intended to create opportunities for increased residential densities and housing diversity. The relevant purpose of the zone is:
	+ To provide housing at increased densities in buildings up to and including four storey buildings.
	+ To encourage a diversity of housing types in locations offering good access to services and transport
	+ To encourage a scale of development that provides a transition between areas of more intensive use and development and other residential areas.
	+ To ensure residential development achieves design objectives specified in a schedule to this zone. The schedule to the zone contains variations to Clause 55 standards.
* The site forms part Residential Character Area Type B under the Council’s Urban Character Study. The future character statement for this area is to, among other things, retain the area’s modest and unassuming character by ensuring multi housing developments are appropriate in scale and form to existing dwellings.
* The site is flat, has a regular configuration and is generously proportioned with an area of 1,555m2. There is no significant vegetation on site that warrants retention. In addition to its proximity to major regional assets it is conveniently located and within walking distance to public transport, schools, public open space, retail and commercial facilities.
1. The Council submits that notwithstanding the site’s zoning, inclusion in the Employment Cluster and the broad policy support for medium density housing in this location, the proposal is nevertheless required to achieve a balanced design response that acceptably respects the character of the neighbourhood and the preferred character. The Council emphasises the ‘Garden City’ concept that is a core element of its character policies and submits that this proposal does not achieve a balanced outcome because its height, scale, typology, form and design detail fails to respect in any meaningful way the character of the neighbourhood.
2. I address subsequently the Council’s concerns about the proposal’s design. Those detailed considerations however are necessarily undertaken having regard to the site’s physical and strategic context. In this respect a consideration of the proposal’s built form response to its neighborhood context is necessarily informed by the zone provisions and the applicable policy framework. The policies applying to the Employment Cluster and the application of the RGZ3 to this locality confirms that the review site forms part of a neighborhood in which increased residential densities and housing diversity is encouraged. As sites in the neighborhood are progressively redeveloped in accordance with these planning scheme provisions, the character of the neighborhood will inevitably change.
3. Significantly the purpose of the GRZ3 does not call for developments to respect the character of the neighborhood, unlike the Neighborhood Residential Zone or the General Residential Zone. An assessment of this proposal that is unduly influenced by reference to the neighborhood’s existing character or a preferred character statement based on an assessment of existing character would be a poor planning outcome.

## is the design of the proposal acceptable?

1. The Council submits that the design of the proposal is not of a standard or quality that is encouraged by the planning scheme, and does not establish an appropriate benchmark or precedent for future developments in this neighbourhood.
2. The Council submits that the proposal does not respond acceptably to the design objectives and decision guidelines of schedule 3 to the RGZ. These provisions encourage apartment developments of a high quality that sit in an open garden setting, provide well located open spaces, retain existing vegetation and provide landscaping including canopy trees in front, side and rear setbacks. Respect for sensitive residential interfaces is also encouraged by minimising the appearance of visual bulk by providing appropriate setbacks and transitioning height and scale to sensitive interfaces. The aspects of the proposal considered by the Council to be unacceptable are:
* The proposal is not an apartment development and the reverse living typology seeks to benefit from the reduced setback and open space requirements of schedule 3 which have been formulated specifically for apartment developments. This has been achieved at the expense of neighbour amenity.
* The reliance on balconies for open space is inappropriate for town house type dwellings and should only be relied on in apartment buildings. The lack of ground level secluded private open space is unacceptable and limits landscaping opportunities.
* The bulk and mass of the proposal is excessive in its presentation to neighbouring properties especially to the rear which are zoned General Residential. The bulk impacts are not able to be sufficiently ‘softened’ because of the lack of landscaping opportunities.
* While the Council is now satisfied that the amended plans have presented an acceptable response to the streetscape because of the increased landscaping opportunities in the front setback, the amended plans have not resolved concerns about the landscaping opportunities in the side and rear setbacks.
* The provision of private open space in balcony form is unacceptable for town house dwellings and in any event provides a poor level of amenity because some of the balconies will be subject to overshadowing and will need to be screened to contain overlooking impacts.
* The detailed design of the proposal which derives from the ground level car parking contributes to poor pedestrian entries and an internal ground floor dominated by garage doors and blank walls.
1. The design objective for schedule 3 to the zone encourages apartment development in an open garden setting. This design objective however does not preclude other forms of residential development[[3]](#footnote-3). I am not persuaded that local policy encourages apartment buildings in this locality exclusively or to the exclusion of other forms of development.
2. Under the zone provisions a permit is required to construct two or more dwellings on a lot and development must meet the requirements of Clause 55 (unless it is a development of five or more storeys). In this case the standards of Clause 55 are varied by the schedule to the zone and the varied standards are to be applied irrespective of the form or typology of development proposed. If the varied standards of Clause 55 are not met, a proposal must still satisfy the relevant objective of Clause 55. In deciding whether an objective is met regard is to be had to the relevant decision guidelines.
3. The schedule to the zone does not operate in the manner that the Council submits, i.e. that only apartment buildings can rely on balconies for secluded private open space and that town house style dwellings are required to provide ground level open space in accordance with the revised standard B28.
4. Having regard to the provisions of the planning scheme as discussed above, this proposal is appropriately assessed having regard to the acceptability of its built form, its character, internal and external amenity impacts irrespective of whether it is a building that is defined as an apartment building or not.
5. By adopting this approach to the assessment of the proposal, I am satisfied that the proposal’s built form is acceptable. I have reached this conclusion because:
* The proposal adopts variety and articulation in its external expression through the use of varied materials, setbacks, roof forms, window position and configuration.
* The proposal’s height is 3.0m or one storey lower than that allowed in the GRZ3.
* The design responds to the design objectives of the schedule to the zone to ensure developments are constructed within an open garden setting. It does this by creating generous front, side and rear setbacks within which effective landscaping can be provided.
* The submitted landscape concept plan adequately demonstrates that effective landscaping including through the provision of canopy trees can be achieved.
* The central driveway divides the development into two distinct components and this combined with the front setback and landscaping of that setback achieves an acceptable streetscape presentation.
* The interface treatments to neighbouring properties has been managed in an acceptable manner. The height of the building transitions to two storeys to the rear and the side and rear setbacks comply with the varied Clause 55 standards. I agree with the applicant submission that the opportunity to vary Clause 55 standards is, in part, intended to provide applicants with increased certainty as to the built form outcomes considered acceptable by the Council. Where the varied standard is met, significant weight ought to be given to that outcome. There are no site-specific circumstances that warrant a design response other than that called for by the schedule to the zone.
* The proposal’s internal amenity is acceptable. The first floor balconies comply with the dimensions and area required by standard B28 (a standard not varied in the schedule to the zone with respect to balconies). The relevant objective is therefore also met[[4]](#footnote-4). I am satisfied that notwithstanding non-compliance with standard B29 for some units (numbers 4, 6 and 8) the relevant objective of Clause 55.04-5 (solar access to open space) is met[[5]](#footnote-5). All of the balconies in the development are north facing and will receive sunlight during the day. The useability and amenity of the balconies is not unduly affected by the non-compliance with the standard.

## Conclusion

1. For the reasons explained above, the decision of the Responsible Authority is set aside. A permit is issued subject to conditions.

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| Laurie Hewet**Senior Member** |  |  |

# APPENDIX A

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| **PERMIT APPLICATION NO:** | TPA/48365 |
| **LAND:** | 193-195 Clayton RoadCLAYTON VIC 3168  |
| **WHAT THE PERMIT ALLOWS:** |
| * Construction of thirteen dwellings and alteration of access to a road in a Road Zone Category 1

in accordance with the endorsed plans. |

# conditions

1. Before the development starts, three copies of amended plans drawn to scale and dimensioned, must be submitted to and 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 amended plans circulated by the permit applicant prior to the VCAT hearing (prepared by Jesse Ant Architects, labelled Drawing No’s TP06 to TP12 inclusive, Revision B and dated 01-10-2018), but modified to show:

* 1. A one (1) metre blind aisle extension at the western end of the driveway.
	2. A minimum opening width of 2.4 metres to single garage doors.
	3. The location and design of any required fire services, electricity supply, gas and water meter boxes, which must be discretely located and/or screened to complement the development.
	4. A corner splay or area at least 50% clear and visual obstructions (or with a height of less than 0.9 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2 metres long x 2.5 metres deep (within the property) along both sides of the exit lane to provide a clear view of pedestrians on the footpath of the frontage road.
	5. Corrections to the numbering of dwellings (e.g. west elevation should be dwellings 11 and 13 and south elevation needs to remove reference to dwelling 14).
	6. Deletion of the 1.5 metre high privacy screens with 500mm ledges from the perimeter of balconies 3, 5, 7, 9, and 11 and their replacement with fixed obscure glass to a minimum height of 1.7 metres above finished floor level.
	7. Notations that the obscure glass to a height of 1.7 metres above finished floor level provided to first and second floor habitable room windows must be fixed to a height of 1.7 metres.
	8. Fixed obscure glass to the south facing kitchen windows serving dwellings 3, 5, 7, 9, 10 and 12 and the west facing kitchen window of Dwelling 11.
	9. Fixed obscure glass to a minimum height of 1.7 metres to the south facing first floor bedroom windows of dwellings 3 and 5.
	10. Changes (if required) to meet the VicRoads conditions set out in this permit.
1. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
2. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
3. 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.

### Street tree

1. The existing street tree located within the area to be occupied by the new vehicle crossing will be removed and replaced by the Responsible Authority at the cost of the permit holder.  An amenity value will be charged and calculated at the time of application to Council’s Horticultural division at time of removal and payment must be provided to the Responsible Authority prior to commencement of the development.

### VicRoads conditions

1. Prior to the commencement of the use or occupation of the development, a sealed access crossover at least 6 metres wide at the property boundary with the edges of the crossover angled at 60 degrees to the road reserve boundary, at least for the first 3 metres from the edge of the road, must be constructed to the satisfaction of the Responsible Authority (RA) and at no to VicRoads or the RA.
2. Prior to the commencement of the use or occupation, all disused or redundant vehicle crossings must be removed and the area reinstated to the satisfaction of the RA and at no costs to VicRoads or the RA.
3. Vehicles must enter and exit the land in a forward direction at all times.
4. Before the development starts, the road sign located at the property frontage must be reallocated to the satisfaction and at no cost to VicRoads.

*End VicRoads conditions*

### Sustainable Management Plan

1. Concurrent with the endorsement of any plans, a Sustainable Management Plan (SMP) must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SMP to the satisfaction of the Responsible Authority.  The report must include, but is not limited to, the following:
	1. Demonstration of how ‘best practice’ sustainability measures have been addressed, having regard to the relevant aspects of Clause 21.13 of the Planning Scheme.
	2. Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
	3. Document the means by which the appropriate target or performance is to be achieved.
	4. Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
	5. Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.
	6. Any relevant requirements of the Condition 1 sub-clauses hereof.

All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to the endorsed Sustainable Management Plan may occur without written consent of the Responsible Authority and (to the extent material and necessary) any relevant flow-on changes to the design response must be also incorporated into the endorsed architectural plans.

1. Prior to the occupation any of the dwellings approved under this permit, a report from the author of the endorsed Sustainable Management Plan (or similarly qualified person or company) must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that (in relation to those relevant completed dwellings ready for occupation) all measures specified in the Sustainable Management Plan have been implemented in accordance with the approved plan.

### Landscaping

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 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;
	8. details of the method of use for garden irrigation;
	9. a landscape management plan that indicates regular maintenance and replacement of plant species if required.

Tree planting must be kept clear of the easement.

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.

### Waste Management Plan

1. 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. The Waste Management Plan shall provide for:
	1. The method of collection of garbage and recyclables for uses;
	2. Designation of methods of collection;
	3. Appropriate areas of bin storage on site and areas for bin storage on collection days;
	4. Dimensions of waste areas;
	5. The number of bins to be provided and capacity;
	6. Details on method and frequency of cleaning and maintenance of waste areas;
	7. Details of ventilation;
	8. A bin washing facility;
	9. Hours of waste and recyclables collection;
	10. Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas;
	11. Litter management.

A copy of this plan must be submitted to and approved by the Responsible Authority. Once approved the Waste Management Plan will be endorsed to form part of the permit.

### Construction Management Plan

1. Before the development starts, 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 noise, dust and water runoff;
	2. prevention of silt or other pollutants from entering into the Council’s underground drainage system or road network;
	3. the location of where building materials are to be kept during construction;
	4. site security;
	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. cleaning and maintaining surrounding road surfaces;
	9. 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.)

### Traffic Engineering

1. The new vehicle crossing is to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services, except with the further written consent of the Responsible Authority. Approval from affected service authorities is required as part of the vehicle crossing application process.
2. The existing redundant vehicle crossing is to be removed and replaced with naturestrip, kerb and channel to the Council Standards.
3. Any works within the road reserve must ensure that the footpath and nature strip are to be reinstated to Council standards.
4. Engineering permits must be obtained for new or altered vehicle crossings and for new connections to Council pits and these works are to be inspected by Council’s Engineering Department. A refundable security deposit of $500 is to be paid prior to the drainage works commencing.

### Drainage Engineering

1. 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.
2. All stormwater be 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. Further information regarding the design of the on-site detention system is provided in the notes section of this permit.
3. The nominated point of stormwater connection for the site is to the south-east corner of the property where the entire site’s stormwater drainage must be collected and free drained via a pipe to the Council pit in the naturestrip to Councils Standards. (A new pit is to be constructed to Council standards if a pit does not exist, is in poor condition or is not a Council standard pit). Note: If the point of discharge cannot be located then notify Council’s Engineering Department immediately.

### Time Limit

1. This permit will expire in accordance with section 68 of the Planning and Environment Act 1987, if one of the following circumstances applies:
	1. The development is not started before 2 years from the date of issue.
	2. The development is not completed before 4 years from the date of issue.
2. In accordance with section 69 of the Planning and Environment Act 1987, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

**---** **End of Conditions** ---

1. I have considered the submissions of all the parties that appeared, all the written and oral evidence, all the exhibits tendered by the parties, and all the statements of grounds filed. I do not recite or refer to all of the contents of those documents in these reasons. [↑](#footnote-ref-1)
2. The site has been zoned RGZ3 under planning scheme amendment C125 (part 1). More detailed provisions including a DDO and policy changes for the Employment Cluster and Clayton Activity Centre were not included as part of that amendment and are now in Part 2 of C125 which has been adopted by the Council but not approved by the Minister for Planning. I was advised by the parties that the Minister has advised the Council that those aspects of C125 that have not been approved require more strategic work and the amendment will need to be subject to further exhibition. Those provisions of C125 (part 2) that apply to the review site and the surrounding area remain unresolved and there is significant uncertainty as to the likely result of the planning scheme amendment process. In these circumstances I am unable to accord any significant weight to those provisions of C125 that have not been approved by the Minister. [↑](#footnote-ref-2)
3. An apartment is defined at Clause 73.01 as: A dwelling located above the ceiling level or below the floor level of another dwelling and is part of a building containing two or more dwellings [↑](#footnote-ref-3)
4. The objective of Clause 55.05-4 is: To provide adequate private open space for the reasonable recreation and service needs of residents. [↑](#footnote-ref-4)
5. The objective of Clause 55.04-5 is: To allow solar access into the secluded private open space of new dwellings and residential buildings. [↑](#footnote-ref-5)