

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P2067/2018  
APPLICATION NO TPA/46427/A

<b>APPLICANT</b>	OROS Oakleigh Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>SUBJECT LAND</b>	807-811 Warrigal Road & 1513-1517 Dandenong Road OAKLEIGH VIC 3166
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	E A Bensch, Member
<b>HEARING TYPE</b>	Compulsory Conference
<b>DATE OF HEARING</b>	10 January 2019
<b>DATE OF ORDER</b>	10 January 2019

**ORDER**

- 1 The hearing for this matter listed for 18 March 2019 is vacated.
- 2 The decision of the Responsible Authority is varied.
- 3 In permit application TPA/46427/A the permit is varied and directed to be issued for the land at 807-811 Warrigal Road & 1513-1517 Dandenong Road, OAKLEIGH in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
  - use of the land for accommodation (dwellings and serviced apartments) in a commercial one zone
  - construction of buildings and works in a Commercial 1 Zone and Design and Development Overlay Schedule 10
  - removal of the easement (Easement E – 1 on TP 438575Q and Easement E – 1 and E – 2 on PS 403162C) (clause 52.01)
  - creation and alteration of access to a road in a Road Zone Category 1 (clause 52.29)

**E A Bensch,  
Member**



## APPEARANCES

For OROS Oakleigh Pty Ltd	Mr John Cicero, solicitor, Best Hooper
For Monash City Council	Mr James Heitmann, town planner

## REMARKS

- 1 Pursuant to section 93(1) of the *Victorian Civil and Administrative Tribunal Act 1998*, this order is made at the request of the parties and with their consent.
- 2 The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
  - a the responsible authority is of the opinion that the permit or amended permit is appropriate having regard to the matters it is required to consider under section 60 of the Act, including the balanced application of the strategies and policies of the relevant planning scheme and is otherwise in conformity with the provisions of the planning scheme and the *Planning and Environment Act 1987*;
  - b the proposed orders will not result in any change to the proposed use or development which would materially affect any person other than the parties to the proceeding.
- 3 Based on the information available to the Tribunal, I consider it is appropriate to make these orders

**E A Benz**  
**Member**

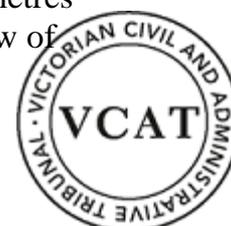


**APPENDIX A**

<b>PERMIT APPLICATION NO:</b>	TPA/46427/A
<b>LAND:</b>	807-811 Warrigal Road & 1513-1517 Dandenong Road, OAKLEIGH
<b>WHAT THE PERMIT ALLOWS:</b>	
<ul style="list-style-type: none"> <li>• use of the land for accommodation (dwellings and serviced apartments) in a commercial one zone</li> <li>• construction of buildings and works in a Commercial 1 Zone and Design and Development Overlay Schedule 10</li> <li>• removal of the easement (Easement E – 1 on TP 438575Q and Easement E – 1 and E – 2 on PS 403162C) (clause 52.01)</li> <li>• creation and alteration of access to a road in a Road Zone Category 1 (clause 52.29)</li> </ul>	
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 plans by Plus Architecture, Project No. 12231, dated 19.12.18 and noted as ‘Compulsory Conference Issue’, but further modified to show:
  - (a) Parking allocated to the residential dwelling component of the development physically secured and separated from the retail and residential hotel components of the development.
  - (b) Direct vehicle access to parking areas associated with the retail tenancy fronting Dandenong Road and residential hotel components of the development only via Dandenong Road.
  - (c) Direct vehicle access to parking areas associated with the retail tenancy fronting Warrigal Road and the Food and Drink Premises fronting Dalgety Street only via Dandenong Road.
  - (d) A corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) to provide a clear view of pedestrians on the footpath of the frontage road.



- (e) Any required modification to plans as recommended in the required Wind Modelling Assessment as required by Condition 5.
- (f) A detailed schedule of all materials and finishes.
- (g) Bicycle parking shown in Dalgety Street relocated to the communal amenity area between Buildings A and B, with half adjacent to the Food and Drink Premises and half adjacent to the Lobby.
- (h) Provision of supermarket trolley returns within the car park if required by the supermarket operator.
- (i) The height of the wall abutting the eastern boundary reduced to 2.4 metres, unless a higher wall is required to address acoustic recommendations.
- (j) Access provided for residents of the development to the supermarket from the lobby between buildings A and B.
- (k) The pedestrian connection from Dalgety Street running parallel to the communal amenity area in Building B opened for pedestrian access into the foyer.
- (l) All recommendations from the Preliminary Acoustic Noise and Amenity Assessment as required by condition 4 of this permit.

All to the satisfaction of the responsible authority.

- 2 The development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.
- 3 Once the development has started it must be continued and completed to the satisfaction of the responsible authority.
- 4 Prior to the endorsement of plans pursuant to condition 1 of the permit, a Preliminary Acoustic Noise and Amenity Assessment must be undertaken by suitably qualified persons to establish what (if any) particular noise attenuation or additional amenity treatments are required. All recommendations or required modifications to the development must be shown on the plans for endorsement and then implemented to the satisfaction of responsible authority.
- 5 Prior to endorsement of plans pursuant to Condition 1 of the permit, a Wind Modelling Assessment must be undertaken by a suitably qualified person to assess the wind impact of the development at street level. Any recommendations or required modifications to the development must be implemented to the satisfaction of responsible authority.
- 6 Prior to the commencement of any works, use and development (other than demolition and other site works associated with site remediation) and for the usage of the land to be changed for a sensitive use (Residential) permitted by this permit for the land, the applicant must provide to the responsible authority either:
  - (a) A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970.



(b) An environmental auditor appointed under the Environment Protection Act 1970 must make a Statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.

Three copies of the Certificate of Environmental Audit or the Statement of Environmental Audit and the audit area plan must be submitted to the responsible authority.

- 7 The development and/or use allowed by this permit must strictly comply with the directions and conditions of the *Environment Protection Act 1970* and also with the conditions on the Certificate or Statement of Environmental Audit.
- 8 A Section 173 Agreement under the *Planning and Environment Act 1987* may need to be entered into with the responsible authority depending on the conditions of the Statement of Environmental Audit issued for the land. Any amendment must be approved by the responsible authority prior to the commencement of any works, use and development and may require further assessment of the land.
- 9 Prior to the use of the land permitted by this permit, issue of a Certificate of Occupancy under the *Building Act 1993* and certification/issue of a statement of compliance under the *Subdivision Act 1988* a letter must be submitted to Council prepared by an Environmental Auditor appointed by the Environment Protection Authority under the *Environment Protection Act 1970* to verify that the conditions of the Statement of Environmental Audit issued for the land have been satisfied.

A copy of the certificate or statement of Environmental Audit issued for the land must be provided to each owner, under a covering letter which draws attention to any conditions or directions on the Certificate or Statement of Environmental Audit.

The land owner and all its successors in title or transferees must upon release for private sale of each of the lots created (if any) by the subdivision include in the Vendor's Statement pursuant to Section 32 of the Sale of Land Act 1962 annexed to the Contract of Sale for the sale of the land, a copy of the planning permit and relevant plans, Certificate or Statement of Environmental Audit for the land and any management plans or other documentation required to be prepared and adhered to in respect of the land.

- 10 Prior to the commencement of the permitted development, the owner of the land to which this permit relates must enter into an agreement with the responsible authority under Section 173 of the *Planning and Environment Act 1987*. In addition to the usual mechanical provisions, the agreement must provide for the following matters:



- (a) Serviced apartment premises within the development are restricted to short-stay serviced apartments defined as “Residential Hotel” by the Monash Planning Scheme.
- (b) Permanent occupation of apartment premises as a primary residence is prohibited.
- (c) Serviced apartment premises are to be managed and remain under the control of a single operator responsible for the operation and maintenance of the entire premises.
- (d) Car parking allocated to serviced apartments on Title, are to be managed and allocated by the serviced apartment operator to the satisfaction of the responsible authority.
- (e) The costs of the responsible authority in relation to the preparation, review and registration of the agreement are to be borne by the owner.

A memorandum of the Agreement is to be entered into on Title. The cost of the preparation and execution of the Agreement and entry of the memorandum on Title is to be paid by the owner.

- 11 Prior to the commencement of the use for serviced apartments an Operational Management Plan concerning the serviced apartments prepared to the satisfaction of the responsible authority must be submitted and approved by the responsible authority. The plan should detail but not be limited to:
- (a) The presence of a manager on site;
  - (b) Services provided;
  - (c) Operating hours;
  - (d) Management of the car park associated with the serviced apartments.

When approved, the Operational Management Plan will be endorsed to form part of this permit and must be implemented to the satisfaction of the responsible authority.

- 12 Function and conference facilities within the development must not exceed 30 patrons/seats at any single time and be operated ancillary to the primary use as serviced apartments, unless otherwise consented to in writing by the responsible authority.
- 13 Function and conference facilities must only operate between 7:30am and 7:30pm Monday to Friday unless otherwise agreed to in writing by the responsible authority.
- 14 Prior to the commencement of works on the site, the owner shall prepare a Waste Management Plan for the collection and disposal of garbage and recyclables for all uses on the site by private contractor. The Waste Management Plan shall provide for:
- (a) The method of collection of garbage and recyclables for uses;
  - (b) Designation of methods of collection by private services;
  - (c) Waste collection via the laneway adjacent to the northern boundary;



- (d) Appropriate areas of bin storage on site and areas for bin storage on collection days;
- (e) Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas;
- (f) 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.

- 15 No goods must be stored or left exposed outside the building so as to be visible from any public road or thoroughfare.
- 16 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.
- 17 The amenity of the area must not be detrimentally affected by the use or development, through the:
  - (a) transport of materials, goods or commodities to or from the land;
  - (b) appearance of any building, works or materials;
  - (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
  - (d) presence of vermin;
- 18 The loading and unloading of goods from vehicles must only be carried out on the land.
- 19 A Loading Bay Management Plan shall be prepared and approved by the responsible authority. The Plan shall provide for the reasonable, safe and convenient use of the loading bays within the development by residents living on the subject site to deliver and remove household furniture and goods.
- 20 The occupants and management of the premises must ensure that any noise emanating from the premises, during and post construction, must not exceed the standards of the State Environment Protection Policies No. N-1 and N-2 and must on request provide evidence to Council of Compliance with the policies.
- 21 Air-conditioning and other plant and equipment installed on or within the buildings must be so positioned and baffled that any noise emitted complies with the appropriate Australian Standards and EPA requirements.
- 22 At the immediate request of the responsible authority noise testing must be taken to demonstrate compliance with EPA noise requirements. Noise testing is to be undertaken at no cost to the responsible authority.



- 23 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.
- 24 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:-
- (a) Planting to soften the appearance of the development.
  - (b) Schedule of all proposed trees, shrubs, creepers 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.
  - (c) Provision of appropriate species suited to low water use and low ongoing maintenance.
  - (d) Detail of growing medium, irrigation and drainage of planter boxes and planting within confined spaces.
  - (e) The extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
  - (f) Subject to approval from the responsible authority and Vic Roads, additional planting within the Dandenong Road, Warrigal Road and Dalgety Street road reserves abutting the subject.
- When approved the plan will be endorsed and will then form part of the permit.
- 25 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, including planting in the road reserves at the cost of the owner or developer, and then maintained to the satisfaction of the responsible authority.
- 26 The landscaping shown on the endorsed plans must be maintained to the satisfaction of the responsible authority in accordance with a Landscape Maintenance Plan prepared by a suitably qualified landscape architect addressing such matters as watering system maintenance and such other matters as considered necessary by the responsible authority. The Landscape Maintenance Plan must be completed to the satisfaction of the responsible authority and will form part of the permit.
- 27 Before the use and development permitted starts, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
- (a) constructed to the satisfaction of the responsible authority;
  - (b) properly formed to such levels that they can be used in accordance with the plans;



- (c) surfaced with an all-weather sealcoat to the satisfaction of the responsible authority;
- (d) drained, maintained and not used for any other purpose to the satisfaction of the responsible authority;
- (e) line-marked to indicate each car space and all access lanes to the satisfaction of the responsible authority.

Parking areas and access lanes must be kept available for these purposes at all times.

- 28 The layout of the development shall generally follow the Design Standards for car parking set out in Clause 52.06-8 of the Monash Planning Scheme.
- 29 Car parking within the development must be allocated as follows:
- (a) Provision of no less than 1 car space to each one or two bedroom dwelling.
  - (b) Provision of no less than 2 car spaces to each three or more bedroom dwelling.
  - (c) Provision of no less than 102 car spaces associated with the supermarket, cafe and retail tenancies.
  - (d) Provision of no less than 0.51 car spaces per serviced apartment/hotel room.
- 30 Any future subdivision of the development must provide for car parking in accordance with the above-mentioned requirement on Title to the satisfaction of the responsible authority. Car parking associated with serviced apartments are to remain entirely within common property associated with the serviced apartments and managed by the operator of the serviced apartments to the satisfaction of the responsible authority.
- 31 Prior to occupation of premises approved by this permit a Car Parking Management Plan must be submitted to and approved by the responsible authority.
- 32 The Car Parking Management Plan must provide for adequate allocation of car parking to service all uses to be undertaken on the land including designated allocation of car spaces for staff of retail and hotel use of the car park. The Car Parking Management Plan must detail any barrier mechanisms and/or paid parking arrangements within public parking areas introduced and implemented in consultation with and to the satisfaction of the responsible authority.
- Once approved the Car Parking Management Plan will be endorsed to form part of this permit. Car parking is to be provided in accordance with the endorsed Car Parking Management Plan and implemented to the satisfaction of the responsible authority.
- 33 Before the development starts, a site layout plan drawn to scale and dimensioned must be approved by the responsible authority.



- 34 The plans must show a drainage scheme providing for the collection of stormwater within the site and for the conveying of the stormwater to the nominated point of discharge.
- 35 The nominated point of stormwater connection for the site is to the north 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 nature strip via a pipe to be constructed to Council Standards. A new pit is to be constructed if a pit does not exist or is not a standard Council pit. If the point of discharge cannot be located then notify Council's Engineering Division immediately.
- 36 All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties. The on-site drainage system must prevent discharge from driveways onto the footpath. Such a system may include either:
- (a) trench grates (150mm minimum width) located within the property; and/or
  - (b) shaping the driveway so that water is collected in a grated pit on the property; and/or
  - (c) another Council approved equivalent.
- 37 Prior to the development commencing detailed engineering plans for civil works within Dalgety Street are required to be submitted to Monash City Council Engineering Department for approval. These plans must include the following:
- (a) New and modified vehicle crossovers.
  - (b) The provision of indented car parking and any modification to the footpath and nature strip.
  - (c) Any civil works and infrastructure within Council land along the site perimeter.
- These works are to be designed, constructed and inspected to the satisfaction of the Monash City Council Engineering Department. The full cost of the design and construction is to be met by the permit holder.
- 38 The existing redundant crossings are to be removed and replaced with kerb and channel. The footpath and nature strip are to be reinstated to the satisfaction of Council.
- 39 All new crossings are 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. Approval from affected service authorities is required as part of the vehicle crossing application process.
- 40 The layout of the development shall follow the Design Standards for car parking set out in Clause 52.06-8 of the Monash Planning Scheme as detailed below:
- (a) Driveway to provide at least 2.1m headroom beneath overhead obstructions.



- (b) Driveway gradient to be no steeper than 1 in 10 (10%) within 5 metres of the frontage to ensure safety for pedestrians and vehicles.
  - (c) Ramp grades (except within 5 metres of the frontage) to be designed as follows:
    - (i) Maximum grade of 1 in 4.
    - (ii) Provision of minimum 2.0 metre grade transitions between different section of ramp or floor for changes in grade in excess of 12.5% (summit grade change) or 15% (sag grade change).
  - (d) Minimum requirements for car park dimensions to be in accordance with Table 2.
  - (e) Clearance to car parking spaces to be in accordance with Diagram 1 in relation to the placement of a wall, fence, column, tree, tree guard or any other structure that abuts a car space.
- 41 Bicycle parking facilities shall generally follow the design and signage requirements set out in Clause 52.34 of the Monash Planning Scheme.
- 42 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:
- (a) measures to control noise, dust and water runoff;
  - (b) prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
  - (c) the location of where building materials are to be kept during construction;
  - (d) the location of site services and constructions sheds;
  - (e) site security;
  - (f) maintenance of safe movements of vehicles to and from the site during the construction phase;
  - (g) the provision of car parking for vehicles associated with construction of the development;
  - (h) wash down areas for trucks and vehicles associated with construction activities;
  - (i) cleaning and maintaining surrounding road surfaces;
  - (j) 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.)



**VicRoads condition (ref: 18786/16)**

- 43 The proposed crossovers to Warrigal Road and Princess Highway are to be constructed to the satisfaction of the responsible authority and at no cost to the Roads Corporation prior to the occupation of the development hereby approved.
- 44 The proposed crossovers to Warrigal Road and Princess Highway should be flared at 60 degrees with 3.0m radial turnouts at the kerb and with 1.0 clearance from any fixed object at the entrance of the property.
- 45 Landscaping and structures within the pedestrian visibility splays must be maintained at a height no greater than 900mm.

**Public Transport Victoria condition (File: F0L/16/34102)**

- 46 The permit holder must take all reasonable steps to ensure that disruption to bus operations along Warrigal Road is kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation measures must be communicated to Public Transport Victoria fourteen days (14) prior.

**Permit Expiry**

- 47 This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
- The development is not started before 2 years from the date of issue.
  - The development is not completed before 4 years from the date of issue.
- 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 ---

