VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P2111/2019Permit Application no. TPA/50168 |

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| APPLICANT | Triten Constructions Pty Ltd |
| responsible authority | Monash City Council |
| SUBJECT LAND | 73-75 Kingsway, Glen Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Tracey Bilston-McGillen, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 14 October & 11 November 2020  |
| DATE OF ORDER | 14 December 2020 |
| CITATION | Triten Constructions Pty Ltd v Monash CC [2020] VCAT 1328  |

# Order

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

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| * Title:
 | Triten Constructions Pty Ltd |
| * Drawing numbers:
 | Date 26/07/2019 - 02.1-G, 02.4-G – 02.11-G, 02.15-G- 02.19-G.Date 13/07/2019 - 02.12-G – 02.14-G |

### Permit granted

1. In application P2111/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/50168 a permit is granted and directed to be issued for the land at 73-75 Kingsway, Glen Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* Development and use of land for a six (6) storey building (plus basement) comprising food and drink premises and offices, and a reduction in the car parking requirement to zero.



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| **Tracey Bilston-McGillen****Member** |  |  |

# Appearances

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| For Triten Constructions Pty Ltd | Mr Dominc Scally, solicitor Best Hooper.Evidence was called from:* Mr Andrea Pagliaro, town planning, Urbis.
* Ms Charmaine Dunstan, traffic, Traffix Group.
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| For Monash Council | Ms Maria Marshall, solicitor Maddocks. |

# Information

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| Description of proposal | Development and use of land for a six storey building (plus basement) comprising food and drink premises and offices and a reduction in the car parking requirement to zero. |
| 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 | Commercial 1 Zone (**C1Z**).Design and Development Overlay – Schedule 12 (**DDO12**). |
| Permit requirements | Clause 34.01-4: a planning permit is required for buildings and works.Clause 43.02: a planning permit is required for buildings and works.Clause 52.06: a planning permit is required to reduce the number of car parking spaces required. |
| Key scheme policies and provisions | Clauses 11.01-R, 11.02-1S, 11.03-1S, 15.01-S, 15.01-2S, 17.01-1S, 17.02-1S, 18.02-2R, 21.05, 21.06, 21.08, 21.11, 21.13, 22.03, 22.14, 52.06, 52.34, 65 and 71.02.  |
| Land description | The review site comprises of two allotments, 73 and 75 Kingsway, Glen Waverley. Combined the review site has a frontage to both Kingsway and the laneway of 12.19 metres, a depth of 30.48 metres and an overall site area of 371.55 square metres.73 Kingsway is currently a two storey shop with 75 a single storey shop, built to the side boundaries. 75 Kingsway comprises a paved area within the rear setback allowing for the parking of two cars.Surrounding the sites is a mix of commercial and residential uses, with a range of building heights.Immediately to the north and south are single storey commercial buildings built to the side boundaries and comprising car parking space within the rear setback.The review site is located within the Glen Waverley Major Activity Centre (**MAC**). The MAC is currently undergoing a significant level of change with new buildings in the area comprising of mixed-use developments ranging in height from 6 to 15 storeys.  |

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

## What is this proceeding about?

1. This is an application for review of a decision of the Monash City Council [**Council**] to refuse to grant a planning permit for the development and use of the land for a six storey building (plus basement) comprising food and drink premises and offices and a reduction in the car parking requirement to zero at 73-75 Kingsway, Glen Waverley. Council refused the proposed development on a number of grounds relating to built form, non-compliance with DDO12 and the Glen Waverley Major Activity Centre Structure Plan [**MAC Structure Plan**], detrimental impact on the amenity of the locality, car parking, safety and traffic movement concerns.
2. Amended plans were circulated making changes to building height, laneway activation and bicycle parking. The changes did not alter Council’s position.
3. The applicant submitted that the proposed development was an acceptable development having regards to the proposed built form, planning scheme provisions and the reduction in car park is acceptable.
4. It is proposed to construct a mixed-use development on the site which can be described as:
* basement with shared storage units, waste area and services;
* ground floor accommodating two restaurant tenancies (125m2 each);
* level 1 accommodating two restaurant tenancies (140m2 each) and balconies projecting over the footpath;
* level 2 accommodating two office tenancies (138m2each);
* level 3 accommodating two food and drink premises (109m2 each) with a balcony fronting Kingsway; and
* levels 4 and 5 accommodating two office tenancies (100m2 each) with a balcony across each level.
1. The building is proposed at a maximum height of 24.32 metres with a three level podium provided to Kingsway. The proposal is built to the side boundaries and set back 1.5 metres (to the gas meter structure) at the ground level from the rear laneway. The proposal uses patterned concrete panels, glazed elements and a feature laser cut panel to the west (rear) elevation.
2. Both Council and the applicant submitted that there are two key issues including:
3. The design and scale of the proposed development having regard to the site’s physical context and policy objectives of DDO12; and
4. The appropriateness of the proposed reduction of car parking.
5. The review site is located within the Glen Waverly Major Activity Centre [**Glen Waverley** **MAC**], as detailed below. The site is located within close proximity to public transport and other uses generally associated with activity centres.



Figure 1: Location of review site. Source nearmap.

1. Having regard to the provisions of the planning scheme, the submissions and evidence, I have decided to grant a permit subject to conditions. My reasons follow.

## Built form

1. Council refused the proposed development on the following ground:

The proposal does not satisfy the design guidelines of the Design and Development Overlay Schedule 12 in relation to building height, and activated laneways.

1. DDO12 applies to the Glen Waverley MAC. The design objectives of DDO12 read:

To ensure development is consistent with the Glen Waverley Activity Centre (GWAC) Structure Plan 2014 (updated June 2016).

To create a strong and distinct image for the commercial core of the Glen Waverley Activity Centre (GWAC) with high quality and site responsive development.

To ensure buildings within core retail areas and along key pedestrian streets contribute to active and engaging street frontages and support a high level of pedestrian amenity to encourage walking around the centre.

To retain the existing fine grain character of commercial buildings along the traditional strip shopping areas within the GWAC such as Kingsway.

To encourage development that retains human scale and an appropriate transition in building height from the Centre to the residential areas adjoining the activity centre.

To ensure new development within the residential land surrounding the commercial core is sensitively designed and complements or enhances the existing character of the area.

1. DDO12 is a guiding provision for the development of this site and the activity centre. The provision provides guidance on matters of building height, setbacks, form and design, activated laneways, wind and weather protection, landscaping and solar access. I was taken to the key elements within the provision including building height, setbacks and laneway activation. I will address these matters below.

### Building Height

1. The proposed height of the building is 24.32 metres. The preferred building height for Built Form Area A is 4-6 storeys (15-22 metres). Council submitted that the building is unacceptable as it exceeds the preferred building height.
2. The applicant submitted that the proposed height, whilst exceeding the height in metres, complies with the provision as it is proposed at 6 storeys. It was contended that the calculation of the overall height is due to two restaurant levels adopting a floor-to-floor height of 4.5 metres and other levels 3.5 metres, which is consistent with the above nominated minimum floor-to-floor heights. It was submitted that the height is appropriate as the building will sit well within the emerging context of the Glen Waverley MAC and will eventually be surrounded by similar scale of built form.
3. In considering the appropriateness of the height, I am guided by DDO12 which reads as follows:

Building heights

Development should not exceed the preferred maximum building height specified in Table 1 and Figure 3 to this schedule. The following minimum floor to floor dimensions should apply:

* 3.2 - 3.5 metres for residential use
* 4.2 - 4.5 metres for retail or restaurant use
* 3.2 - 3.5 metres for any other use

An application to exceed the preferred maximum building height must demonstrate how the development will continue to achieve the Design Objectives, Development Outcomes and all other relevant requirements of this schedule.

The preferred maximum building height excludes rooftop services which should be hidden from view from any adjoining public space or designed as architectural roof top features. Roof top services includes but is not limited to plant rooms, air conditioning, lift overruns and roof mounted equipment.

The preferred maximum building heights have been calculated on the basis that the ground floor measures 4.5 metres, and each floor following measures 3.5 metres. The minimum and maximum building heights will be measured from natural ground level.

1. In considering the appropriateness of the height, reference is made to the design objectives and development outcomes of DDO12. I consider the proposed height of 24.32 metres acceptable for the following reasons:
* I find that an increase of 2.3 metres would not be visually discernible from the street or surrounding area.
* I acknowledge that, within the existing character, a building of 6 storeys may have the appearance of being a dominant element in this section of Kingsway, in the short to medium term. This is a consequence of the existing predominant two storey scale. However, the vision for this area as determined by DDO12, is for buildings of a height ranging from 4-6 storeys.
* The proposed development is consistent with the design objectives. The design objectives seek buildings that contribute to active and engaging frontages, support a high level of pedestrian amenity and retain the fine grain character of commercial buildings along the traditional strip area such as Kingsway.
* I note that the proposed site comprises of two sites consolidated. The proposed building at ground floor to Kingsway has provided a central entrance to the upper levels and two distinct shop fronts. The ground floor will read as respecting the fine grain character of Kingsway. I further find that the provision of two shop fronts is consistent with policy seeking frontages that engage and support a high level of pedestrian amenity.

### Building Setbacks and Laneway Activation

1. The building adopts a three-storey podium to Kingsway with the building being set back 5 metres from levels four and above. This setback is consistent with the preferred setback and Council took no issue with it. It was the rear setback that Council submitted failed to be consistent with DDO12. Council submitted that the setback of 1.5 metres applies to the entire building, not limited to the ground floor.
2. The preferred setbacks for this site read:

Zero street setback up to a height of 3 storeys, 5 metre street setback required for additional storeys.

Zero side setback.

1.5 metre rear setback required to create a laneway connecting Railway Parade North and O’Sullivan Road.

1.5 metre rear setback required to create a laneway connecting Montclair Avenue and Coleman Parade.

1. The development outcomes read:

Active and engaging frontages to Kingsway, Railway Parade North, Coleman Parade, O’Sullivan Avenue and Bogong Avenue. Activities at the front of any building(s) at ground level should generate pedestrian interest and interaction and the façade(s) should incorporate windows and door openings with clear glazing.

The fine grain character of Kingsway is retained, where new buildings are articulated to reflect the pattern of narrow shopfronts.

Human scale along Kingsway, Railway Parade North, Coleman Parade, O’Sullivan Road and Bogong Avenue is retained.

1. The proposed building provides a 1.5 metre setback to the laneway at the ground level to a height of 4.5 metres. It is noted that the setback of 1.5 metres is to the gas meter whilst the building line is set back 2.6 metres. The building is then constructed to the boundary up to level six. It is noted that the services duct located in the centre of the site is set back 1.5 metres, but the feature laser cut panel to screen the duct is located to the boundary.
2. Council submitted that the 1.5 metre setback should apply at all levels, not only to the ground floor. Council submitted that the setback provision of 1.5 metres applies to the entire site which in turn, widens the laneway required to create a laneway connecting Montclair Avenue and Coleman Parade. Council further submitted that this interpretation is supported for the following reasons:
* DDO12 does not specifically nominate or detail that the 1.5 metre setback is restricted to the ground level or any other level. It was noted that other provisions of the preferred setback are specific in their application. If you read the setback provisions of other areas, they state, for example in Built form area C:

1.5 metre ground level setback required to achieve laneway connecting Montclair Avenue and Coleman Parade.

This area specifically refers to ‘ground level’, whereas Built form area A reads:

1.5 metre rear setback required to create a laneway connecting Montclair Avenue and Coleman Parade.

There is no reference to ‘ground level’, therefore it must be read that it applies to the entire building.

* The lack of a 1.5 metre setback accentuates the dominance of the building on the laneway and impinges on the public realm with little clear benefit.
* The lack of the setback to all levels has the potential to set built form precedent that is in conflict with the ‘DDO12 ambition of activating this section of laneway with opportunities for passive surveillance’.
1. The applicant disputed Council’s interpretation stating that the 1.5 metre setback only applies to the ground level. Mr Pagliaro submitted that the 1.5 metre setback at the ground level is considered acceptable as the ‘proposed development allows for the widening of the rear laneway at ground level as encouraged by the DDO12 and the GWAC Structure Plan whilst providing weather protection to the widened portion of the laneway’.
2. This is a poorly worded provision. I am persuaded by Council that it is a reasonable interpretation that the 1.5 metre setback could apply to the entire building, not only the ground level. I am persuaded that it is reasonable that given other provisions within the setback provision specifically state ‘ground level’ such as Area C, if it was intended to only apply to the ground floor, then the Area A setback requirement would state ‘ground level setback’. I note that it doesn’t.
3. However, even if it is considered that the 1.5 metre applies to the entire building, I am persuaded by the applicant that having regard to the provisions of DDO12, the provision of a 1.5 metre setback only at the ground level is acceptable. There is no guidance provided within the provision itself or any supporting documents as to what is intended to be achieved from the setback, other than the widening of the laneway.
4. The setback at ground level provides what the provision states the setback is seeking to achieve, being:

1.5 metre rear setback required to create a laneway connecting Montclair Avenue and Coleman Parade.

1. I am not persuaded that a 1.5 metre setback is required for the entire building to achieve the creation of a laneway, provide activation and provide a ‘more pedestrian friendly environment’. If I refer to DDO12, reference to the rear setback of 1.5 metres is as follows:

Building form and design

Buildings fronting laneway should be designed for active uses and generate pedestrian interest and interaction with a permeable façade, for instance window and door openings with clear glazing.

and

Activated laneways

Development in Built Form Areas A, B and C should provide the activated laneways depicted in Figure 3.

Setbacks required for laneways are as follows:

* 1.5 metre setbacks required to achieve laneway connecting Railway Parade North and O’Sullivan Road (east of Kingsway).
* 1.5 metre setbacks required to achieve laneway connecting Montclair Avenue and Coleman Parade (west of Kingsway).

Setbacks are required to achieve an 8 metre wide pedestrian laneway connecting Railway Parade North and O’Sullivan Road (west of Kingsway)

1. And at Table 1 to DDO12:

Preferred setbacks

1.5 metre rear setback required to create a laneway connecting Montclair Avenue and Coleman Parade

1. In considering the requirement for a 1.5 metres rear setback, the relationship of the building and the laneway, Mr Pagliaro in his planning evidence recommended the following changes:
* Reduction in height of the gas meter and hydrant booster.
* Relocation of the bicycle hoops adjacent to the entry ramp.
* Extension of the restaurants so that they are 1.5 metres from the western title boundary.
* Expansion of the rear glazing at ground floor to reflect the above changes.
1. Mr Pagliaro sketched the changes above:



Figure 2 Proposed changes to the rear ground floor as detailed in evidence of Mr Pagliaro.

1. On my site inspection, I observed very poor pedestrian amenity along the laneway. It is clearly a thoroughfare for vehicles and not pedestrians with the section of laneway between Montclair Avenue and Coleman Parade being narrow and littered with bins. It is currently uninviting and not user-friendly to a pedestrian.
2. Apart from widening the laneway between Montclair and Coleman Streets, a 1.5 metre setback at ground level to a height of the proposed 4.5 metres, provides activation and would permit pedestrians to, eventually, walk along the setback space and not on the road. The changes recommended by Mr Pagliaro further improve the interaction to the laneway by removing the facilities structures. This not only allows for the widening of the laneway but allows for pedestrians to walk along this space clear of any obstructions. I will require these changes as permit conditions.

### Façade detailing

1. Council raised concern with the detailing of the façade as it presents to Kingsway submitting that it should be redesigned to incorporate clear vertical elements and articulation into fine-grain proportions. Council presented an amended façade, detailed below.



Figure 3 Extract of Council submission to VCAT.

1. I am not persuaded by the Council that the façade detailing should be amended as suggested. Council submits that underlying the suggestion is to create a fine grain appearance to Kingsway, given the consolidation of the two sites. I find however that the suggested façade detailing presents as a strong horizontal treatment rather than the vertical appearance of the proposed development.
2. Council further submitted that the proposed provision of outdoor space and seating on top of the Kingsway awning is a poor urban design outcome and put that it should be removed. Council also put that the glass balustrade at level 3 is considered to be an undesirable outcome. It was put that the street wall profile could be better defined by visually concealing or ‘doing away’ with the need for this balustrade. Again, I am not persuaded by this submission. On my site inspection I observed an existing character of first floor balconies. In this location, the first floor balcony with seating activates the area. This is not a quiet suburban location; this is an activity centre. The seating provides activity, interest and surveillance.

## parking

1. The site seeks a reduction of the car parking requirement to zero. Council refused the proposed development on the ground that:

The proposal fails to satisfy the purpose of Clause 52.06 of the Monash Planning Scheme in relation to the provision of appropriate on site car parking spaces, safety and traffic movement in the area.

1. The statutory car parking requirement applying to the site is a total of 49 car spaces, including 19 restaurant spaces, 21 office spaces and 9 food and drink premises spaces. It is noted that there has been a historical payment of car parking spaces for the two properties equating to a total of 10.4 car parking spaces.
2. Council submitted that in considering the reduction in car parking, the Tribunal has consistently adopted a ‘centre-based’ approach to car parking for sites situated within activity centres and in broad terms, has adopted the following:
* Favoured requests by applicants for the reduction of car parking spaces, as opposed to submissions that the full amount is required.
* Has undertaken its own ‘car parking assessment’ and based its decision on the surrounding features of the relevant activity centre.
* Has considered availability of nearby alternative parking options, accessibility of public transport, need to encourage more sustainable modes of transport.
* Likely to adopt a ‘centre-based approach’ to car parking in an activity centre.
1. In this case however, Council submits that the current scenario is one that warrants the need for the Tribunal to adopt a different approach, given the historical policy context. To support this statement, I was referred to *Anastasopoulos v Kingston CC*[[2]](#footnote-2) where the Tribunal stated:

[61] In terms of creating a precedent for other developments of a similar nature, each matter must be assessed on its merits, and this approval does not guarantee approval of future proposals, which will need to be considered in their context.

1. Council further contended that:

A critical distinguishing feature relates to Council’s historical strategic policy vision which is contrary to the Minister for Planning’s (Minister) vision. Council’s vision on how planning controls should deal with car parking requirements in the municipality has a long history and goes as far back as 2004[[3]](#footnote-3).

1. I acknowledge Council’s submission that a different approach to car parking should be adopted but disagree. I agree with the approach adopted by Members Carew and McDonald in *Raffles Chatter Geringhap Pty Ltd v Greater Geelong CC*[[4]](#footnote-4) where they made the observation that parking needs to be considered across an activity centre. I find these observations are relevant to the consideration of this proposal. I refer to paragraphs 114 and 115 of *Raffles Chatter Geringhap Pty Ltd* where it reads:

[114] We consider that there is current policy support in the planning scheme for developments to provide less car parking, particularly in areas such as this where there is a good level of public transport access (although this may be less than in Melbourne). Simply applying the statutory rate or even a reduced rate may not be consistent with sustainable transport objectives set out in the scheme.

[115] The Tribunal in *Vincent Corporation Pty Ltd v Moreland CC* (Includes Summary) (Red Dot) [[2015] VCAT 2049](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2015/2049.html) provided a summary of the approach to car parking within activity centres which we adopt:

a. Parking across an activity centre needs to be addressed in a centre wide manner.

b. Providing or restricting parking through the planning scheme, only forms one part of the overall management of car parking demand and supply in these centres.

c. There are a number of alternative means of travel emerging. Most notable of these are share car arrangements and increased bicycle use, including electric bicycles. These have grown extensively in use in the past 10 years. Their impact on empirical demand is not yet known. Policies to minimise car dependency suggest it should lead to less demand.

d. In areas of existing restricted on-street parking, the supply of on-street spaces for future occupants of a proposal is not particularly relevant to the assessment. In these locations, on-street road management restrictions can ensure future residents of a proposal are not able to rely on any spare capacity in on-street parking.

e. While a current empirical demand may exist not every site can, or needs to, meet this demand. Some sites may have limited capacity to meet car parking needs, particularly small or constrained sites.

f. A proposal for a reduced resident parking provision needs to consider:

i Access to public transport, in timing, diversity of routes and frequency.

ii Walkable access from the site to shops and facilities that provide for the daily needs of residents.

iii Access to other transport options including good bicycle infrastructure and walkable access to publically available shared use cars.

* + 1. As with any proposal, a decision to reduce parking ultimately must be tested on its own merits with competing issues balanced to achieve net community benefit. Any potential adverse impacts from parking on-street will need to be assessed against the benefits a proposal may bring to the community where car parking forms only one part of a use or development proposal.
1. As in *Raffles Chatter Geringhap Pty Ltd*, this proposal is not for a residential development, but I find the principles equally apply here, that is, each proposal is to be addressed on its own merits in its context of policy setting and as part of an integrated transport system.
2. A key issue in this case, as submitted by Council, has been the removal of the Parking Overlay that until May 2018 applied to the site. The application of the overlay would have required, potentially, a contribution to be paid in respect of the provision of car parking. It was contended that since the removal of the overlay and associated schedules, all proposals granted to date, have provided some form of car parking contribution, consistent with the vision of the parking overlay. Council submitted that it needs to be fair in how it approaches the provision of car parking. That is, in the absence of the overlay and any updated strategic work relating to car parking, is it fair to allow a development to reduce to zero parking without a contribution? The parties put to me that they are all aware of development approvals (yet to be constructed) that have been required to pay a parking contribution (some in the millions).
3. Council further submitted that Glen Waverley has been identified as part of the Suburban Rail Loop and once the details of the station location are known, Council intends to undertake a comprehensive review of the MAC Structure Plan and Sustainable Transport Plan with a view to preparing an amendment to implement any changes. It was put that:

Critically, such a review will proceed on the basis that another train station will offer Council the opportunity to reduce parking rates (as proposed by Goal F.2 in the Sustainable Transport Plan) and to set up a contributions scheme to fund infrastructure like bike paths and other initiatives that are not multi-deck car parks.

However, at this stage, as the Suburban Rail Loop station location is yet to be confirmed, Council is forced to, in the meantime, assess new development proposals without the benefit of previous planning controls in place to ensure that some form of car parking contribution is made[[5]](#footnote-5).

1. I agree with Ms Dunstan that it is important to take a forward looking approach to decreasing reliance of car-based travel. I must make a decision based on the provisions of the planning scheme as they apply at the time of making the decision, not what historically has occurred or what may happen in the future (unless it is of direct relevance as a seriously entertained planning proposal). The fact is that Council, at this time, does not have a Parking overlay or precinct plan to rely on in order to assess the provision of car parking or to require a contribution payment. This does not mean that there is no guiding policy to assist with the decision making or that a decision cannot be made. I agree with the opinion of Ms Dunstan, that despite Council having no current parking plan, there is both State policy and clause 52.06 which provide guidance on how to assess the provision of parking.
2. I acknowledge that to reduce the car parking to the site to zero is a significant step for Council. As I have stated, whilst Council may, in the future, undertake further strategic work regarding car parking in the activity centre, I must have regard to the planning scheme as it stands.
3. Ms Dunstan in her evidence submitted that a reduction of car parking to zero is to be considered in the context of clause 52.06-7 including:
* an empirical assessment of car parking demands;
* existing car parking deficiency of the current uses of the site;
* historical financial contribution paid to Council for the site in lieu of the provision of on-site car spaces;
* the site constraints to providing car parking;
* provision of public transport;
* located within an activity centre; and
* any traffic impacts and any impacts on existing car parking conditions in the nearby area.
1. As detailed earlier, the proposed development generates a demand of 21 spaces for the proposed office space, 19 spaces for the restaurant and 9 spaces for the food and drink premises. The proposed development is seeking a reduction of the car parking requirement to zero. I am persuaded by the permit applicant and Ms Dunstan that the reduction of car parking to zero is acceptable for the following reasons.

#### Policy support

1. I am persuaded that there is policy support for the provision of zero car spaces. The site is located within an activity centre, a place that encourages a mix of land uses and more intensive development. I am further persuaded that if activity centres keep providing parking, they will continue to be used and the demand simply grows. You cannot create a modal shift by continuing to provide the same level of long term/commuter parking.
2. Clause 18. 01-1S Land use and transport planning, seeks to ensure that developments take advantage of all available modes of transport and to minimise adverse impacts on existing transport networks and the amenity of surrounding areas. Policy further seeks to coordinate improvements to public transport, walking and cycling networks with the ongoing development and redevelopment of urban areas.
3. Clause 21.06-3 seeks:

To promote more sustainable transport patterns by ensuring major activity and neighbourhood centres are well services by public transport, by encouraging walking and cycling through providing safe and accessible public spaces, and by concentrating activities that generate high numbers of trips in highly accessible locations.

1. It is clear from documents such as *Plan Melbourne* that there is a vision to create 20 minute neighbourhoods, which in a location such as the Glen Waverley MAC supports the notion of well-connected places also promoting alternative sustainable modes of transport. The Glen Waverley train station is 100 metres walking distance from the site, the activity centre is well served by bus routes and the centre provides car parking for short and long term parking.
2. It is clear that as Melbourne grows, there will be increasing pressure on infrastructure, including roads, parking and public transport. I find that it is clear that a policy direction of the planning scheme is to encourage sustainable alternative modes of transport. In this case, I find that the location is one where a reduction in car parking is acceptable and supported by the current planning framework.

#### Availability of public transport

1. Clause 52.06-7 sets out a series of factors that should be considered when assessing the appropriateness of providing fewer car parking spaces. One of those factors is access to or provision of alternative transport modes to and from the land. This site has excellent access to a train station and numerous bus routes. A new train station part of the Suburban Rail Loop is also to be accommodated within Glen Waverley which will provide another alternative transport source.

#### Demand assessment

1. I am persuaded that having regard to the car parking demand assessment undertaken by Ms Dunstan, it is appropriate to allow a full waiver of car parking. The office use generates long term parking demand of 21 spaces. Within the activity centre, there is limited long term parking spaces available and surveys indicated that long-term parking within the centre is in high demand throughout office hours, with a peak occupancy of 85%. Parking is generally short term parking with the exception of commuter parking in the Euneva West Parking area and a commuter car park 350 metres north-west of the site.
2. I share the view of Ms Dunstan that office is a land use that is particularly conducive to achieving a modal shift away from private cars to alternative methods of transport. The site is located within 100 metres walking distance of a train station and is well served by bus routes and bicycle parking has been provided on site.
3. To the demand generated by the restaurant/food and drink premises, I agree with Ms Dunstan that in a location such as this, these uses do not typically generate car parking demands in their own right. Activity centres generally attract people to an area with a sharing of trips. The peak demands would be during the evening on a Friday and Saturday, where demand surveys indicate there is sufficient car parking available within the centre. Ms Dunstan submitted that in any event, there is adequate short term parking available to accommodate the statutory demand generated by these uses.

#### Practicality of providing on-site car parking

1. Council submitted that the proposed development could provide a basement car park accommodating 16 car spaces over two levels. Given the size of the site, some form of mechanical car parking would be required. I am persuaded by the applicant, that the provision of parking in a basement accessed from the laneway, would be inconsistent with the vision of DDO12. The DDO12 seeks an activated laneway. Given the width of the site, an accessway and garage would occupy within the vicinity of 50% of the width. This would have a negative impact on the proposed level of activation to the laneway. Given the size of the site, it is very likely that cars would need to queue to access the basement. I do not consider this to be practical or a desirable outcome given the width of the lane and the design aspirations of DDO12.

#### Historic contributions by existing businesses

1. It is understood that no 75 Kingsway provides two car spaces within the rear setback and no 73 provides one car space. An existing car parking deficiency of 14 car spaces exist. It is further understood that a car parking contribution has been paid to Council for 73-75 Kingsway in lieu of the provision of on-site car parking spaces equivalent to 10.4 spaces.
2. Council submitted that it must make decisions that are ‘fair’ and take into account the fact that some sites have permits issued requiring contributions for parking.
3. Clause 52.06-7 states that regard should be had to:

The equity of reducing the car parking requirement having regard to any historic contributions by existing businesses.

1. As I understand it, the historic contributions were required under the previous Parking overlay, and as stated, this site has made an earlier contribution. In considering this application to reduce car parking to zero, whilst the history of the parking provisions is relevant to a degree, it does not dictate the decision making in this proposal.

#### Summary

1. I am not persuaded by Council that the provision of a basement car park for 16 cars is warranted or a good planning outcome for the future of the activity centre. Considering clause 52.06, I find the reduction in parking to zero, supported because:
* The Planning Policy Framework supports and encourages intensive redevelopment of the MAC;
* The site has access to a range of public transport;
* The site provides bicycle parking to encourage alternative transport methods;
* The site is constrained by its size;
* The provision of a basement car park would not be consistent with the provisions of DDO12 encouraging an active frontage to the laneway;
* The size of the site would constrain the design of any basement parking;
* Those who wish to drive to work will need to compete for the existing highly utilised public car parking or alternatively seek commercial car parking;
* The short term parking or parking outside business hours can be accommodated in the car parks provided within the activity centre; and
* The lack of office parking will encourage a modal shift of transport to the office;

## Conclusion

1. I find the proposal is an acceptable outcome having regard to the provisions of the planning scheme, the sites context and the overall change sought for the activity centre. I find, on balance, that the proposed development at six storeys, is encouraged by the provisions of the DDO12.
2. For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

|  |  |  |
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| **Tracey Bilston-McGillen****Member** |  |  |

# Appendix A – Permit Conditions

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| --- | --- |
| Permit Application No | TPA/50168 |
| Land | 73-75 Kingsway, Glen Waverley |

|  |
| --- |
| What the permit allowS |
| In accordance with the endorsed plans:* Development and use of land for a six (6) storey building (plus basement) comprising food and drink premises and offices, and a reduction in the car parking requirement to zero.
 |

## Conditions

### Amended Plans Required

1. Before the development starts, amended plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. 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 prepared by Triten Constructions Pty Ltd, dated 26/07/2019 and plan numbers 02.1-G, 02.4-G – 02.11-G, 02.15-G- 02.19-G and dated 13/07/2019 and plan numbers 02.12-G – 02.14-G but modified to show:
	1. the following changes generally in accordance with the sketch included in the Urbis evidence prepared by Mr Pagliaro of Urbis P/L and dated September 2020:
		1. Reduction in height of the gas meter and hydrant booster.
		2. Relocation of the bicycle hoops adjacent to the entry ramp.
		3. Extension of the restaurants so that they are 1.5m from the western title boundary.
		4. Expansion of the rear glazing at ground floor to reflect the above changes.
	2. details of the screening associated with the duct in the rear elevation;
	3. details of the external cladding, trim and colour scheme of the proposed development;
	4. bicycle parking facilities to generally follow the design and signage requirements set out in Clause 52.34 of the Monash Planning Scheme;
	5. changes required to satisfy recommendations in the Sustainable Management Plan in accordance with Condition 5; and
	6. details of the waste rooms to accord with the Waste Management Plan in accordance with Condition 7.

All of the above must be done to the satisfaction of the Responsible Authority.

1. The development as shown on the endorsed plans must not be altered without the prior 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. As part of the ongoing consultant team, Triten Constructions Pty Ltd or an architectural firm which has comparable skills and expertise to the satisfaction of the Responsible Authority, must be engaged to:
	1. oversee design and construction of the development; and
	2. ensure the design quality and appearance of the development is consistent with the proposal as shown in the endorsed plans or otherwise to the satisfaction of the Responsible Authority.

### Management Plans

#### Sustainable Management Plan

1. Before the plans required by Condition 1 are endorsed, 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 Monash Planning Scheme.
	2. identification of relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
	3. documentation of the means by which the appropriate target or performance is to be achieved.
	4. identification of responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
	5. demonstration that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.

All works must be undertaken in accordance with the endorsed SMP to the satisfaction of the Responsible Authority. No alterations to the endorsed SMP 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 plans.

#### Waste Management Plan

1. Before the plans required by Condition 1 are endorsed, a Waste Management Plan [**WMP**] must be submitted and approved by the Responsible Authority. The plan must be substantially in accordance with the Waste Management Plan prepared by Leigh Design and dated 16 July 2019 (supersedes report dated 21 June 2019) but revised to the satisfaction of the Responsible Authority to:
	1. reflect the revised development plan layout.
	2. include sewer/ water facilities connected to the waste room for bin washing and ventilation for odour control.
	3. include details of the building operator.

Waste collection must be undertaken in accordance with the approved WMP to the satisfaction of the Responsible Authority.

#### Construction Management Plan

1. Prior to the commencement of works on the site (including demolition and excavation), a Construction Management Plan (CMP) must be submitted and approved by the Responsible Authority. No works are permitted to occur until the CMP has been endorsed by the Responsible Authority. Once endorsed, the CMP will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The CMP 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 subcontractors' 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 CMP;
	13. contact details of key construction site staff;
	14. any other relevant matters, including the requirements of Head, Transport for Vitoria 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;
	* No works are permitted on Sundays or Public Holidays;

Note: Hours for demolition and construction condition to be used in conjunction with this condition. Check EPA website for standard construction hours.

1. The provisions, recommendations and requirements of the endorsed Management Plans related to in Conditions 5-8 inclusive must be implemented and complied with to the satisfaction of the Responsible Authority.

### General Conditions

1. The walls on the boundary of adjoining properties must be cleaned and finished in a manner to the satisfaction of the Responsible Authority.
2. No equipment, services, architectural features or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans must be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.
3. All waste receptacles must be stored on the property except during waste collection to the satisfaction of the Responsible Authority.

### Time for Starting and Completion

1. In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
	1. The development is not started before two (2) years from the date of issue.
	2. The development is not completed before four (4) years from the date of issue.

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. [2020] VCAT 435. [↑](#footnote-ref-2)
3. Paragraph 100, VCAT submission 14 October 2020. [↑](#footnote-ref-3)
4. (Corrected) [2019] VCAT 426 [↑](#footnote-ref-4)
5. Paragraph 120 & 121 VCAT Submission, 14 October 2020. [↑](#footnote-ref-5)