

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P480/2022
PERMIT APPLICATION NO. TPA/52573

CATCHWORDS

Section 82 *Planning and Environment Act 1987*; Monash Planning Scheme; Commercial 1 Zone; Buildings and works; Amenity; Laneway Access; Tree Protection

APPLICANTS	Nicola Holden-Mulcahy, Leo (Shua) Chen & Others
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENT	Mark de Weerd
SUBJECT LAND	178A Warrigal Road OAKLEIGH VIC 3166
HEARING TYPE	Hearing
DATE OF HEARING	16 January 2023
DATE OF INTERIM ORDERS	16 and 27 January 2023
DATE OF FINAL ORDER	15 February 2023
CITATION	Holden-Mulcahy v Monash CC [2023] VCAT 98

ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: Modarc
 - Drawing numbers: VCAT amended plans (Sheets 1 - 13, Revision E)
 - Dated: December 2022
- 2 In application P480/2022 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/ 52573 a permit is granted and directed to be issued for the land at 178A Warrigal Road Oakleigh in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:



- Buildings and works to the existing shop and the construction of a dwelling.

Megan Carew
Member

APPEARANCES

For applicant	Nicola Holden-Mulcahy She called Mark Skovdam, Arborist to give evidence ¹ .
For responsible authority	Maria Marshall, solicitor, Maddocks
For respondent	Mark de Weerd He called Simon Jonas, Arborist to give evidence ¹ .

¹ *With the agreement of the parties at the hearing and at the direction of the Tribunal Ms Marshall provided to both witnesses the Tribunal's on-line hearing declarations.*



INFORMATION

Description of proposal	<p>Buildings and works to the existing shop and the construction of a dwelling. The shop will not be increased in floor area. A single car space is proposed for the shop use. The proposed dwelling will be located to the rear. It is single storey with a roof top terrace. A single car space is proposed for the dwelling use.</p> <p>No subdivision is proposed as part of this application.</p> <p>It is not proposed to create or alter access to Warrigal Road.</p>
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	Commercial 1 Zone
Permit requirements	Clause 34.01-4 to construct a building or to carry out works in the Commercial 1 Zone.
Relevant scheme policies and provisions	Clauses 11, 15, 16, 17, 18, 21, 22.01, 22.03, 22.04, 22.05, 34.01, 52.06, 52.29, 53.18, 54, 62, 65 and 71.02.
Land description	<p>The review site is part of a small commercial strip located on the eastern side of Warrigal Road, north of North Road. It contains an existing single storey shop front with a frontage to Warrigal Road of 5.49m and a total site area of 162.21m². The land has an abuttal to a rear laneway described in the Council road register as Laneway 222.</p> <p>To the north the site abuts a shop and dwelling at 178 Warrigal Road. To the south it abuts two properties, Shop 1/180 being a double storey shop and dwelling fronting Warrigal Road and 2/180 being a single storey dwelling behind with access from the laneway. Land on the east side of the laneway is residential in nature.</p>
Tribunal inspection	I inspected the review site and its environs following the hearing.



REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 It is proposed to introduce a single storey dwelling with roof top terrace to the rear of the existing shop on the review site. Council supports the proposal. Council and the permit applicant say that it is an acceptable response to the site's physical and strategic context.
- 2 Ms Holden-Mulcahy and others (the applicants for review) seek a review of Council's decision to grant a permit. They say access from the rear laneway is not acceptable and that car parking is inadequate. They submit that the proposed dwelling will impact on the amenity of adjoining and nearby dwellings and that the built form will impact on the row of pear trees located along the boundary of the adjoining dwelling at 2/180 Warrigal Road.
- 3 Having inspected the site and surrounds and considered the policy framework, the purpose of the zone, the decision guidelines of the relevant clauses of the Monash Planning Scheme, the submissions of the parties and the evidence before me, I have determined to grant a permit. I have found that, subject to varied conditions, the proposal is well-conceived and is consistent with the planning scheme. My reasons are set out below.

PRELIMINARY MATTERS

Amended Plans

- 4 The permit applicant had circulated a set of amended plans in accordance with the Tribunal's practice note *PNPE9 Amendment of plans and Applications*. The permit applicant sought the leave of the Tribunal to substitute these for those that originally accompanied the application. The applicants for review objected to the plans being substituted indicating that they preferred the original plans.
- 5 Having heard from all parties, pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, I substituted the plans prepared by Modarc, VCAT amended plans (Sheets 1 - 13, Revision E) dated December 2022 for those that accompanied the application. The extent of amendments were simple and easily understood, the plans had been appropriately circulated and sufficient notice of the plans had been provided.

² 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.



What is before me?

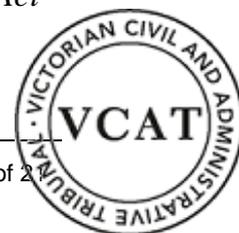
- 6 The amended plans included plan TP1-B ‘Proposed subdivision’. The applicants for review questioned whether the application included permission for subdivision.
- 7 The permit application before me, as described within the permit application form is to construct a building or to carry out works in the Commercial 1 Zone pursuant to Clause 34.01-4. Council confirmed that no application for subdivision had been made. The permit applicant submitted that this plan was provided as an indicative layout and confirmed that the application did not include seeking permission for subdivision.
- 8 I find that the application before me is simply for buildings and works. I canvassed the possibility of simply deleting this plan to make it clear the ambit of discretion. The applicants for review did not support this approach. While I have retained the amended plans as a set, I have assessed the application as it is made before me. Subdivision will require separate approval in the future in accordance with the provisions of the planning scheme. It is not unusual for a subdivision to follow a development application.

Who is the permit applicant?

- 9 The original statement of grounds by the permit applicant had been lodged in the name of ‘Melva Thelmis’ by a planning consultant, Clarke Planning. This statement of grounds was later formally withdrawn by Clarke Planning.
- 10 A statement of grounds received by the Tribunal on 12 August 2022 was subsequently lodged by Mark De Weerd, the original permit applicant. I confirmed at the hearing that the respondent in this matter is Mark De Weerd. As he was the original permit applicant, no formal orders are required.

Late circulation of evidence

- 11 Ms Holden- Mulcahy submitted that the evidence of the permit applicant had been submitted late. The report was provided to the Tribunal and all parties on the 10 January 2023 which did not accord with the Tribunal’s directions.
- 12 After hearing from all parties, I agreed with the applicants for review that late circulation of evidence was not consistent with the Tribunal’s practice and was not consistent with natural justice or procedural fairness.
- 13 The applicants for review sought that I not allow the evidence. However, I indicated that I would be assisted by the arboricultural evidence given the scope of matters before me. I determined to allow the evidence to be tabled under Section 98(1) of the *Victorian Civil and Administrative Tribunal Act 1987* (VCAT Act).



- 14 Consequently, I found that it was necessary to ensure that the applicants for review had a reasonable opportunity to address the late evidence. After some discussion with the parties about possible options, I provided the parties two options to redress the prejudice arising from the late circulation of evidence. These included to commence the hearing as scheduled but adjourn the hearing of the evidence for several weeks to the 30 or 31 January 2023. Alternatively, it would be possible to adjourn all or part of the first day of the hearing to provide time for the parties to review the evidence, recommence with the evidence on the second scheduled day and to also allow for further submissions from Council and the applicants for review on the subject matter of the arboriculture evidence following the hearing.
- 15 I stood the matter down to allow the parties to consider these options and invited them to indicate how they wished the hearing to proceed. Upon reconvening, all the parties indicated that they would prefer to simply proceed with the hearing but for me to allow any further submissions following the hearing on the evidence. I confirmed with Ms Holden-Mulcahy that she was comfortable with this approach and determined to proceed with the merits hearing with the agreement of all the parties.
- 16 I provided for the opportunity for further submissions to be made following the hearing in my interim orders dated 16 January 2023. I note that this interim order also separately addressed questions relating to the draft tree protection permit conditions provided by the Council and discussed with the parties at the hearing. The orders provided that:
- By no later than 4pm on the 23 January 2023 the responsible authority may circulate to the Tribunal and all parties a revised version of the draft permit conditions relating to tree protection.
 - 3 By no later than 4pm on the 30 January 2023 the applicants for review and the responsible authority can make a further written submission to the Tribunal (and copy all parties) in respect to the impact of the development on the trees located on the property at 2/180 Warrigal Road, Oakleigh.
 - 4 By no later than 4pm on the 30 January 2023 the applicants for review and the respondent can make a further written submission to the Tribunal (and copy all parties) in respect to the draft permit condition provided in response to order 1 above.
- 17 I provided an extension of time for further submissions in response to an emailed request to the Tribunal by Ms Holden-Mulcahy as per my further interim order dated 27 January 2023.
- 18 I received further submissions from the parties in accordance with my orders. The submissions on behalf of the applicants for review go beyond the specific matters outlined in my orders above. No leave was provided in my order for further submissions beyond those relating to the arboricultural evidence as specified in my interim order above. Accordingly, I have not



given any weight to these submissions in making my findings on the planning merits of this application.

De Novo Hearing

- 19 Ms Holden-Mulcahy made several submissions about the processing of this application by the Council and the actions of the permit applicant prior to the hearing.
- 20 I give no weight to these submissions. The Tribunal's role is to consider the planning merits of the permit application 'de novo' or afresh. In exercising its review jurisdiction in respect of a decision, the Tribunal has all the functions of the original decision-maker.

THE PLANNING MERITS

- 21 The parties accepted that at a broad level, there is support in the planning scheme for more intensive use and development of this site given its zoning and location and proximity to services. Importantly, no planning permission is required for the proposed land uses. I find that the proposal to provide a dwelling on this site is fully supported by the Commercial 1 Zone that has the objectives *to create vibrant mixed use commercial centres for retail, office, business, entertainment, and community uses and to provide for residential uses at densities complementary to the role and scale of the commercial centre.*
- 22 The concerns raised by the applicants for review relate to the extent of buildings and works proposed and the design response. Ms Holden-Mulcahy identified the following summary of key issues:
 - Car parking deficiencies and impacts to neighbourhood amenities.
 - Transport triggers and missing external referrals.
 - Tree protection and lack of evidence to demonstrate major encroachment can be safely achieved.
 - Overshadowing, overlooking and privacy matters which are made worse by the revised plan.

I address these matters my assessment below.

EXISTING SHOP WORKS

- 23 There were no concerns raised regarding the buildings and works to the existing shop premises, some of which have already been completed. Council submitted that:
 - 45 With regard to the proposed building and works to the existing shop, they are of a minor nature and will not cause unacceptable impacts. Notably, some of the proposed building and works are exempt from the planning permit requirements pursuant to clause 62.021-2 of the Scheme as they are internal



rearrangement of a building that do not increase the gross floor area of the building.

46. The Applicants are concerned that some of the proposed building and works to the existing shop have been undertaken without a planning permit. This means retrospective approval is required for these building and works.
 47. The principles relating to applications for retrospective approval are well-established. Essentially, the principle is that a permit applicant should not gain any benefit or advantage from using or development of the land without approval, nor should a permit applicant be penalised as a result of using of developing the land without approval. The merits of a use or development started or carried out without approval should be assessed as if this had not occurred. As stated above, Council considers the proposed building and works to the existing shop to be acceptable based on their merits.
- 24 I agree with Council that some of the renovation works, particularly those internal to the building would not require planning approval pursuant to the provisions of Clause 62.02. To the extent that approval is required, I find that the single storey shop will continue to provide for an active frontage to Warrigal Road. I find that the works to the existing shop premises are acceptable and will not have any significant impacts on the amenity of the adjoining properties.

CAR PARKING CONSIDERATIONS

Shop use

- 25 The proposed dwelling addition to the rear of the shop will occupy space that is presently available on an informal basis for car parking. Historical aerial photography provided by the applicant for review shows one-two cars have parked in this area in the past. The car parking is not line-marked or defined. Council submitted that the existing parking is informal and not required by any existing permit.
- 26 The proposal will replace this car parking with two formal car spaces at the rear of the site accessed from the rear laneway. One space will be allocated to the shop use and one to the proposed dwelling.
- 27 The applicants for review are concerned about the loss of the informal opportunity for a second car space for the shop in this busy centre where parking is constrained for customers on Warrigal Road.
- 28 I find that the provision of a single car space is acceptable. Clause 52.06-1 of the planning scheme provides that the requirements for car parking apply to:
 - a new use; or
 - an increase in the floor area or site area of an existing use; or



- an increase to an existing use by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use.

In this case the shop use is existing, and the floor area is not proposed to be increased and as such the provisions of Clause 52.06 do not apply to the proposed shop use.

- 29 I note that even if the use was not existing, that the provisions of Clause 52.06-3 include an exemption for new land uses within a Commercial 1 Zone where the floor area is not increased, and the reduction does not exceed 10 car spaces:

A permit is not required to reduce the required number of car parking spaces for a new use of an existing building if the following requirements are met:

- The building is in the Commercial 1 Zone, Commercial 2 Zone, Commercial 3 Zone or Activity Centre Zone.
- The gross floor area of the building is not increased.
- The reduction does not exceed 10 car parking spaces.
- The building is not in a Parking Overlay with a schedule that allows a financial contribution to be paid in lieu of the provision of the required car parking spaces for the use.

Accordingly, the re-use of the existing shop building would be exempt from the need for a permit under these provisions.

- 30 Even if I was wrong about this, I would be satisfied that the provision of one car space for the shop use, designated for staff is acceptable considering the decision guidelines of Clause 52.06 of the planning scheme. It is an approach consistent with other commercial land uses within this shopping strip that share the publicly available car spaces for customers.

Dwelling use

- 31 In respect to the dwelling use, Clause 52.06 would require one car space. This is provided on the site and as such the proposal is consistent with the planning scheme.

Layout

- 32 The layout of the two car spaces is very tight due to the narrow width of the allotment. The car spaces do not include provision for car door openings in accordance with Diagram 1 Clearance to car parking in Clause 52.06. The traffic engineering assessment submitted with the application show that the spaces can be successfully accessed from the laneway. While the spaces are tight, they meet standard dimensions for car parks (except for the door opening). I find that this is acceptable given the constraints of the site and the nature of the uses proposed.

- 33 The car spaces will be aligned at 90 degrees to the entry to the adjoining property to the south (see Figure 1). The applicants for review were very



concerned about potential vehicle overhang from the car spaces preventing access to this gate. The proposal includes additional depth to the car spaces (to 5.5m) as required by Council's engineers to address this issue. I am satisfied that the car spaces are acceptably sized. In addition, I have included conditions requiring line marking to clearly identify the site's boundary with the laneway.



Figure 1: Adjoining residential access (photo: Tribunal's own).

TRAFFIC CONSIDERATIONS

- 34 The proposal provides two car spaces that will be accessed from Laneway 222 to the rear of the site. I inspected the laneway and noted that it is presently used by a mix of commercial and residential properties including the review site.
- 35 The application was supported by Council's traffic engineers as set out in the officer's report. Ms Holden- Mulcahy submitted that Council's traffic engineers did not support the use of the laneway during construction and had advised her of the same. Ms Marshall was not able to confirm this by the end of the hearing. Ms Marshall undertook to clarify Council's position and to provide a response by email following the hearing. By email dated 31 January 2023, Council confirmed that the position of its traffic engineers had not altered and that the proposed vehicle access for the subject land is acceptable.
- 36 I am satisfied that the traffic generated by the proposal can be accommodated within the surrounding laneways and road network. The number of cars that will be generated by the two car spaces is equivalent to the former informal parking arrangement and as such would be expected to have no significant impact on the safety and operation of the surrounding road network.

- 37 The applicants for review are very concerned about the impact of construction on access along the main road and within the laneways and access to their properties. They are concerned about the need to close parts of the laneway and/ or restrict access to their properties for long periods of time. It was clear from the material before me that there had been issues in the past associated with obstruction of the laneway which were raised by the applicants for review with Council.
- 38 As I noted in the hearing, construction matters are appropriately dealt with through other legislation and are not generally a matter for the planning merits. I note that the recommended conditions of the permit include a requirement for a Construction Management Plan which the permit applicant accepts.
- 39 I am satisfied that the short-term construction impacts are not a reason to reject this proposal. While the laneway access is clearly a constraint, I am satisfied that the grant of a planning permit is not futile and that like many other sites across the metropolitan area the construction impacts can be managed by the relevant authorities.

REFERRAL TO THE HEAD, TRANSPORT FOR VICTORIA

- 40 The review site abuts Warrigal Road, a main road. The applicants for review submitted that a referral to the Head, Transport for Victoria is required.
- 41 It is not proposed to create or alter access to the road or to subdivide the land. As such, no permit requirement arises under Clause 52.29 Land adjacent to a Transport Zone and no referral is required under the provisions of Clause 52.29. Any subsequent permit application for a permit to subdivide the land will require this to be addressed in accordance with the planning scheme.
- 42 There are no referral requirements under Clause 66 of the planning scheme.

TREE PROTECTION

- 43 The adjoining property to the south has a row of pear trees along the boundary with the review site (see Figure 2). These trees are not protected by the planning scheme but are a site constraint to be considered in any design response.





Figure 2 Trees on adjoining property (Photo: Tribunal's own)

44 The proposed dwelling is set back from the common boundary 1m to provide for access to the shop from the rear and to provide separation to the row of trees.

45 At the hearing, I had the benefit of the two expert arborists. It became clear at the hearing that the two arborists agreed that the trees could be protected subject to a tree management plan with Ms Holden- Mulcahy's witness altering his opinion based on the further evidence of Mr Jonas.

46 The written evidence of Mr Skovdam was that:

It is recommended the arborist engaged by the developer (DB Horticulture) demonstrates how the trees will remain viable with the proposed development of the site at 178A Warrigal Road.

With the current proposed plans for the development of the site, it is my opinion the trees long term viability will be detrimentally impacted. Further changes may be required to the building plans with an appropriate Tree Protection Management Plan (TPMP) incorporated to ensure the trees experience continued health and viability. The Notice of Decision to Grant a Permit from the Monash City Council. Application No. TPA/52573 has outlined Tree Protection Measures under conditions 4, 5 and 6; this is not an exhaustive list, and it is recommended that a TPMP be developed and implemented as per AS4970-2009.

In his verbal evidence, Mr Skovdam noted that the evidence of Mr Jonas had now satisfied him on the first point and that the trees would remain viable subject to a tree management plan. The only addition he recommended to the tree management plan was to provide for a watering regime during construction.

47 The evidence of Mr Jonas was that the trees would be protected subject to construction techniques and a tree management plan. His evidence was based on a root investigation. He considered that there was benefit to the plans showing a permeable surface within the 1m side setback and within

the proposed car parking area. He did not agree with Mr Skovdam that irrigation was required during construction.

- 48 Based on the agreement of the two witnesses and on my assessment and inspection of the site, I am satisfied that the proposal can respond to the trees subject to a tree management plan that identifies requirements before, during and after construction. I agree with Mr Skovdam that irrigation would be appropriate during construction given the lack of permeable area elsewhere within the Tree Protection Zone, but I find that this can be considered by Council under the tree management plan. I have required the permeable areas recommended by Mr Jonas to be included on the plans.
- 49 In her further written submissions Ms Holden- Mulcahy expressed concern about the extent of pruning that my need to occur. The evidence of Mr Jonas is that this would depend on whether scaffolding was required external to the wall. Council's draft conditions require as part of the tree management plan require all the pruning be addressed and comply with the *Australian Standard AS4373-2007 Pruning of Amenity Trees* to the satisfaction of the responsible authority. I find that this is an appropriate safeguard as to manage the impact of pruning because of the development.
- 50 Ms Holden- Mulcahy in her further written submissions questioned the evidence of Mr Jonas. I note that the evidence in question was supported by the evidence of Mr Skovdam. I found both witnesses to be credible in their approach and in their duty to the Tribunal.
- 51 I note that Ms Holden- Mulcahy raised some concerns about the actions of the permit applicant prior to the hearing and how the root investigation was carried out and how long the trench remained open. The evidence of Mr Jonas was that the trench was backfilled in accordance with usual practice.
- 52 The trench was not open at the time of my inspection, and I observed that the trees were healthy. In considering the planning merits, I am not required to investigate the actions of the permit applicant or the way the root investigation was conducted.

AMENITY CONSIDERATIONS

- 53 Any new development on small lots presents a challenge to balance the amenity of neighbours with reasonable sharing of development opportunities. There will undoubtedly be a change in the level of amenity presently enjoyed by the neighbouring dwellings, particularly Ms Holden- Mulcahy's property because of this proposal. However, the question is whether the extent of change is reasonable.
- 54 The proposed dwelling addition is single storey in scale. I find that the overall height is acceptable in its context within the Commercial 1 Zone and the scale of adjoining dwellings to the north and south. I find that the level of articulation of the built form including the proposed walled stairwell when viewed from the rear laneway is acceptable in this robust location.



- 55 The applicants for review raise specific concerns about the overshadowing, loss of daylight and visual bulk to the northern and southern neighbours. I find that these matters are acceptable. The building form is single storey and is set off each side boundary. The built form extends along the block in a manner consistent with the adjoining properties. I find that the extent of overshadowing is appropriately limited because of the single storey form and the glazed treatment to the roof terrace.
- 56 The roof terrace is to be screened where required and Council recommended that a condition be added to make this clearer on the plans. There will be an opportunity for overlooking towards the top of the stairwell to the south and east, however this space is transitory, and I find that the objectives of Standard A15 of Clause 54 would be met if applicable.
- 57 The provision of the roof terrace does result in a non-compliance with Standard A13 of Clause 54 to the southern boundary due to the glazed screen proposed. This would impact on two bedrooms to the southern neighbour. I find that this is acceptable within this commercial environment given that the materiality is glazed and will allow for light penetration. Noise was also of concern in this location. I find that noise from a residential terrace is acceptable within this commercial zone, noting that the solid glazed screening should assist with some mitigation.

WHAT CONDITIONS ARE APPROPRIATE?

- 58 In determining the conditions of permit I have had regard to the draft conditions provided by the Council, the submissions of the parties, the evidence before me and the matters set out in my reasons above.
- 59 I modified the condition relating to postal provision in condition 1 as the application before me does not include subdivision.
- 60 In response to my interim orders, the responsible authority provided an amended draft tree management plan condition for the consideration of the parties. The applicants for review were concerned that the conditions would not be able to be implemented. For example, they submitted that:
- Any reasonable person would agree, that due to the location of the Trees and the proposed dwelling it is impossible to both protect the trees and safely construct the dwelling. If we accepted Mr Jonas proposal to be fact and guarantee that the pruning will not exceed 0.5m then the tree protection fencing would need to be erected at least 1.5 m from the southern boundary and hence impede construction.
- 61 Having considered the further written submissions in response, I find the tree protection conditions appropriate. A requirement for a tree management plan as part of the planning permit is a common planning approach that allows the detailed issues to be resolved prior to construction and provides a mechanism by which Council can enforce the protection of the trees.



62 I have not made any changes to the construction management plan condition as agreed to by the permit applicant, other than to remove reference to a basement car park, given one is not proposed. The construction management plan provides the applicants for review with a starting point for any complaints that may arise.

ARE THERE ANY OTHER ISSUES?

63 The applicants for review raised several other issues in their statement of grounds. None provides the basis for rejecting the permit application or requiring additional conditions.

CONCLUSION

64 The proposal will be a change to the area, but one that is consistent with the objectives of the planning scheme for this commercial area.

65 For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to conditions.

Megan Carew
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/52573
LAND	178A Warrigal Road OAKLEIGH VIC 3166

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Buildings and works to the existing shop and the construction of a dwelling.

CONDITIONS

Amended Plans

- 1 Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the VCAT amended plans (Sheets 1 - 13, Revision E and dated December 2022) but modified to show:
 - (a) A minimum rear boundary building setback of 5.5 metres.
 - (b) A notation that the car spaces and the rear title boundary are to be clearly line-marked.
 - (c) All surfaces within the 1m southern setback of the dwelling and the rear car park to be notated as permeable.
 - (d) The location of privacy screening to the roof terrace in accordance with Standard A15 of Clause 54.
 - (e) The location and design of postal provision along the Warrigal Road building façade, including details of the dwelling identification along this frontage.
 - (f) The location and design of any proposed electricity supply meter boxes.
 - (g) The location and details of tree protection measures as outlined within the Tree Management Plan in accordance with Condition 6 of this permit, with all nominated trees clearly identified and numbered on both site and landscape plans, and a summary of the requirements of the Tree Management Plan to be annotated on the development and landscape plans.
 - (h) Any amendments to the required footing details, as required by the Tree Management Plan required by Condition 6.



- (i) Any changes required by the Tree Management Plan required by Condition 6.
 - (j) Reference to the signage on the western elevation removed from the plans.
 - (k) A Landscape Plan in accordance with condition 3 of this Permit.
- All to the satisfaction of the Responsible Authority.

Layout not to be Altered

- 2 The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

Landscape Plan

- 3 Concurrent with the endorsement of any plans requested pursuant to Condition 1, a landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. The plan must show any planting proposed and details of proposed surface finishes including pathways, accessways, car parking and terrace.

Tree Protection

- 4. Concurrent with the endorsement of plans under condition 1 of this permit, or prior to the commencement of any works at the site (including demolition and excavation whether or not a planning permit is required), whichever occurs sooner, a letter of engagement must be provided to the Responsible Authority from the project arborist selected to oversee all relevant tree protection works. The project arborist must be an appropriately experienced and qualified professional (minimum Cert IV or equivalent in experience).
- 5. Before the commencement of any building and works at the site (including excavation and demolition), a tree protection fence must be erected around the 4 *Pyrus Calleryana* (Callery Pears) located along the northern boundary of 2/180 Warrigal Road, Oakleigh. The tree protection fence must comply with Australian Standard 4970-2009 and the Tree Management Plan endorsed under Condition 6 of this permit, and must be maintained until the conclusion of all works on site, including landscaping to the satisfaction of the responsible authority.
- 6. Concurrent with the endorsement of plans under condition 1 of this permit, or prior to the commencement of any works at the site (including demolition and excavation whether or not a planning permit is required), whichever occurs sooner, a Tree Management Plan (TMP) prepared by a suitably qualified arborist must be submitted to and approved by the Responsible Authority. When approved, the TMP will form part of this permit and all works must be done in accordance with the TMP.



The TMP must detail measures to protect and ensure the viability of the 4 *Pyrus Calleryana* (Callery Pears) located along the northern boundary of 2/180 Warrigal Road, Oakleigh. It must include (but not limited to):

- (a) a tree protection plan drawn to scale showing the tree protection zone (TPZ) and structural root zone of the Callery Pears;
- (b) details of the non-continuous footing system generally in accordance with the expert witness statement prepared by Simon Andrew Jonas (dated 9 January 2023) to prevent root severance of roots over 40mm;
- (c) details of how root systems of the Callery Pears to be impacted will be managed. This must detail any requirements regarding excavations, works/finishes on the plans shown within the TPZs and pruning of any roots required which must be undertaken by a project arborist in accordance with the Australian Standard *AS4373-2007 Pruning of Amenity Trees*, using sterilised, specialised tree root pruning equipment;
- (d) bored pipers for the upper 500mm of the soil profile must be excavated non-destructively through hydro-excavation prior to achieving full depth through auguring;
- (e) specify the location/design of tree protection fencing;
- (f) details of any mulching/ watering requirements within the TPZs of the Callery Pears during the pre-construction and construction period;
- (g) details of the ground protection for the 1m strip between the southern boundary of the site and the southern wall of the proposed dwelling during construction. Either Geocell or rumble boards over mulch as detailed in the AS4970-2009 must be applied;
- (h) all remedial pruning works that are required to be performed. Details of the pruning must accord with Australian Standard *AS4373-2007 Pruning of Amenity Trees*, and include a detailed photographic diagram specifying what pruning will occur. Any proposed pruning must also consider any scaffolding requirements for the construction of the proposed dwelling. All tree pruning must be carried out by a suitably qualified Arborist (AQF Level 3, minimum) in accordance with Australian Standard *AS4373-2007 Pruning of Amenity Trees*;
- (i) details regarding site access by vehicles, machinery and storage of any related building materials in relation to the TPZs of the Callery Pears. If positioning of machinery within the TPZs of the Callery Pears cannot be avoided, track mats or other ground protection must be provided under the supervision of the project arborist;
- (j) no building material, demolition material, excavation or earthworks



may be stored or stockpiled within the TPZs of the Callery Pears during the demolition, excavation and construction period of the development without the prior written consent of the Responsible Authority;

- (k) no underground services may be installed within the TPZs of the Callery Pears unless with the prior written consent of the Responsible Authority;
- (l) supervision timetable and certification (sign off sheet) of all tree management activities undertaken by the project Arborist, to the satisfaction of the Responsible Authority; and
- (m) details of watering regime and method of protection of exposed roots during construction.

The approved TMP must be implemented to the satisfaction of the Responsible Authority.

Landscaping Prior to Occupation

- 4 Before the occupation of any 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 thereafter maintained to the satisfaction of the Responsible Authority.

Drainage

- 5 The site must be drained to the satisfaction of the Responsible Authority.

Waste Management

- 6 Adequate provision shall be made for the storage and collection of garbage and other solid wastes and these facilities are to be located on the site to the satisfaction of the Responsible Authority.

Vehicle Crossovers

- 7 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
- 8 Car spaces shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the Responsible Authority.

Urban Design

- 9 The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

Construction Management

- 10 Prior to the commencement of any site works (including any 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 Plan 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:

- (a) Appropriate measures to control noise, dust and water and sediment laden runoff;
- (b) Appropriate measures for the prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
- (c) Appropriate measures relating to removal of hazardous or dangerous material from the site, where applicable;
- (d) A plan showing the location and design of a vehicle wash-down bay (if required) for construction vehicles on the site so as to prevent material leaving the site and being deposited on Council's road network;
- (e) A program for the cleaning and maintaining surrounding road surfaces;
- (f) 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;
- (g) Measures to provide for public safety and site security;
- (h) A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises;
- (i) A Traffic Management Plan showing truck routes to and from the site;
- (j) A 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;
- (k) Appropriate measures to ensure that sub-contractors/tradespersons operating on the site are aware of and adhere to the requirements of the CMP;
- (l) The provision of contact details of key construction site staff; and
- (m) Include a requirement that except with the prior written consent of the Responsible Authority, a requirement that demolition, excavation or construction works must only be carried out during the following hours:
 - i Monday to Friday (inclusive) – 7.00am to 6.00pm;
 - ii Saturday – 9.00am to 1.00pm;

- iii Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines)
- iv No works are permitted on Sundays or Public Holidays.

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

Satisfactory Continuation and Completion

- 11 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Expiry of permit for development

- 12 This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
 - (a) The development is not started within two (2) years of the issue date of this permit.
 - (b) The development is not completed within four (4) years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

– End of conditions –