

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P827/2022
PERMIT APPLICATION NO.TPA/52932

CATCHWORDS

Application under section 79 of the *Planning and Environment Act 1987* – to review the failure to grant a permit within the prescribed time.

APPLICANT	Daniel Hogan
RESPONSIBLE AUTHORITY	Monash City Council
REFERRAL AUTHORITY	Head, Transport for Victoria
SUBJECT LAND	174B Warrigal Road OAKLEIGH VIC 3166
HEARING TYPE	Hearing
DATE OF ORDER	14 March 2023

ORDER

Amend permit application

- 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:

Prepared by:	Themeski Design and Build
Drawing numbers:	Project No. 0498TP Sheet Nos. A001, A006, A100 – A102 inclusive, A201, A204-A207 inclusive, A300. A301, A700, A703, A706, A800, All Rev. A
Dated:	12.12.22

Permit granted

- 2 In application P827/2022 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/52932 a permit is granted and directed to be issued for the land at 174B Warrigal Road Oakleigh VIC 3166 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Buildings and works within a Commercial 1 Zone (CZ1) to construct a shop with an associated dwelling and alteration of access to a road in a Transport Zone 2.



Laurie Hewet
Senior Member

APPEARANCES

For applicant	Mr P Stewart, town planner
For responsible authority	Mr G Gilfedder, town planner
For referral authority	No appearance



INFORMATION

Description of proposal	Construction of a dwelling over three levels above a single storey shop. The existing shop will be partly demolished. The proposed building will rise to a height of 14.51m.
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. ¹
Planning scheme	Monash Planning Scheme
Zone and overlays	Commercial 1 Zone (CZ1). The site abuts a Transport 2 Zone – Principal Road Network.
Permit requirements	Clause 34.01-4: A permit is required to construct a building or construct or carry out works. Clause 52.29-2: A permit is required to create or alter access to a road in a Transport Zone 2.

¹ Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision.



Land description

The review site is located on the eastern side of Warrigal Road, approximately 100 metres north of North Road. The land is a regularly shaped lot with a frontage of approximately 5.49 metres, and a depth of 29.64. The site has a total area of 163 square metres. It adjoins a 6.1 metre wide lane at the rear (east).

The site currently contains an attached single storey brick commercial (retail premises) building with a paved area within the frontage utilised for car parking. Vehicle access is also available via the laneway to the rear with another car space located at the rear of the site. The building is currently used as a car seat cover, retail and workshop premises.

The site forms part of a group of single and double storey commercial buildings which extends in a northerly direction from the Warrigal Road/North Road intersection.

The opposite (western) side of Warrigal Road comprises double storey commercial buildings.

The eastern side of the lane abutting the rear of the commercial buildings is residential.

REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 This is an application to review the failure of the Responsible Authority to grant a permit within the prescribed time in respect of a permit application for the construction of three storey building at 174B Warrigal Road, Oakleigh.
- 2 The Responsible Authority ultimately decided that had it not been for the application for review it would have refused permission for the following reasons:
 - The proposal is inconsistent with the Industry and Business Development Policy at Clause 22.03 of the Monash Planning Scheme as it fails to achieve architectural and urban design outcomes that positively contribute to the neighbourhood character.
 - The proposal does not adequately satisfy the Commercial 1 Zone Decision Guidelines with respect to the streetscape, amenity impacts, pedestrian and vehicle movement.
 - The proposal does not adequately satisfy the requirements of Clause 52.06 of the Monash Planning Scheme with regard to car parking and access.²
 - The proposed development is considered to be an overdevelopment of the site.
 - The proposed development will have a detrimental impact on future potential development of the area.
 - The proposed development is considered to be a poor design outcome for the site.
- 3 At the start of the hearing the applicant applied to amend the permit application by the substitution of amending plans as foreshadowed by notice given in accordance with the Tribunal's practice requirements.
- 4 No person opposed the amendment of the permit application in this way, and I ordered the amendment of the permit application in accordance with the applicant's request.
- 5 Following the receipt of the amended plans the Council advised that it no longer pursued the ground relating to the proposal's non-compliance with Clause 52.06 of the planning scheme.

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.



- 6 At the end of the hearing I gave oral reasons for my decision to set aside the Council's decision and to grant a permit, subject to conditions.

Laurie Hewet
Senior Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/52932
LAND	174B Warrigal Road OAKLEIGH VIC 3166

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Buildings and works within a Commercial 1 Zone (CZ1) to construct a shop with an associated dwelling and alteration of access to a road in a Transport Zone 2.

CONDITIONS

- 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 development plans prepared by Themski Design and Build (Revision A) dated 12.12.22 but modified to show:
 - (a) Clearly line marked visitor space.
 - (b) An additional 500mm in length must be provided between each tandem space.
 - (c) Clearance to car parking spaces in accordance with Diagram 1 of Clause 52.06 in relation to the placement of a wall, fence, column, tree, tree guard or any other structure that abuts a car space.
 - (d) Any internal parking space with minimum dimensions of 5.4 metres length and 3.5 metres width.
 - (e) The height of balustrade screening (on all sides) to the first floor eastern facing balcony provided on the floor plan.
 - (f) The location of the void space and skylights to be indicated on the relevant floor plan below.
 - (g) The location of on-site storage for waste bins associated with the shop and dwelling, including details of access arrangements and screening.
 - (h) The laundry to be located internal to the dwelling.
 - (i) The location of any plant equipment proposed.
 - (j) Colour elevations plans to be prepared to reference to all materials proposed and codes to be provided on all walls/elements.



- (k) The proposed horizontal cladding proposed on the southern elevation to be introduced to the rooftop stairwell structure.
- (l) Dimensions of the proposed business identification sign including a note that no illumination is proposed.
- (m) The presentation of the awning canopy to Warrigal Road (including signage board) to be no deeper than 900mm.
- (n) A revised Waste Management Plan in accordance with Condition 3.
- (o) The location and design of any proposed electricity supply meter boxes.

All to the satisfaction of the Responsible Authority.

- 2 The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
- 3 Concurrent with the endorsement of plans required pursuant to Condition 1, a revised Waste Management Plan must be submitted to and approved by the Responsible Authority. The Waste Management Plan prepared by Themeski Design and Build dated December 2021, must be modified to show:
 - (a) Correction of projected waste generation rates for a mixed use development in accordance with City of Monash MUD and Commercial Developments WMP Guide for Applicants;
 - (b) On site storage for bins associated with the commercial tenancy and dwelling;
 - (c) The pathway of bins to be wheeled to and from location for collection;
 - (d) The location of bins to be collected;
 - (e) The provision of organics / food waste recycling;
 - (f) Provision of capacity of storage for glass recycling bin;

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

- 4 Prior to the commencement of any site works (including any demolition and excavation), a Construction Management Plan (CMP) must be submitted to 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 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. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
- (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:
 - Monday to Friday (inclusive) – 7.00am to 6.00pm;
 - Saturday – 9.00am to 1.00pm;
 - Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines)
 - 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.

- 5 The site must be drained to the satisfaction of the Responsible Authority.
- 6 A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works for approval. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.
- 7 Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing; or any alternate system.
- 8 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
- 9 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
- 10 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
- 11 A waste storage area must be provided that is sufficient in size to contain all rubbish receptacles. Waste storage area must be sealed, graded and drained to sewer. Any waste storage rooms must be constructed so to prevent the entrance of vermin and must be able to be easily cleaned.
- 12 No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.
- 13 Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the Responsible Authority. The external car parking space linemarking must be repainted to reflect the new external parking layout.
- 14 No equipment, services, architectural features or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.
- 15 The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority
- 16 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
- 17 This permit will expire in accordance with section 68 of the Planning and Environment Act 1987, if one of the following circumstances applies:



- The development is not started before 2 years from the date of issue.
- The development is not completed before 4 years from the date of issue.

In accordance with section 69 of the Planning and Environment Act 1987, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or

- within six (6) months afterwards if the development has not commenced; or
- within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

– End of conditions –

