

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1063/2023

APPLICANT	Builtwise Constructions Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	15 Anzed Court MULGRAVE VIC 3170
HEARING TYPE	Compulsory conference
DATE OF HEARING	24 November 2023
DATE OF ORDER	24 November 2023

ORDER BY CONSENT

Permit granted

- 1 In application P1063/2023 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/54607 a permit is granted and directed to be issued for the land at 15 Anzed Court, Mulgrave in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of a warehouse, office building with six occupancies, display of advertising signage and six lot subdivision.

Hearing vacated

- 3 The hearing scheduled for 1 February 2024 is vacated. No attendance is required.

J Perlstein
Member

APPEARANCES

For applicant

Matthew Chapman, planner of Hellier
McFarland.

For responsible authority

Anne Maree Roberts, planner of Monash City
Council.



REMARKS

Full settlement

- 4 This matter involves an application pursuant to section 77 of the *Planning and Environment Act 1987* for a review of the decision of Monash City Council to refuse to grant a permit for construction of a warehouse, office building with six occupancies, display of advertising signage and six lot subdivision on the subject land.
- 5 At the compulsory conference, the parties reached agreement and request orders by consent. The parties request that a permit be granted, subject to conditions.
- 6 This order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
- 7 The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
 - the responsible authority is of the opinion that the permit appropriate having regard to the matters it is required to consider under section 60 of the *Planning and Environment Act 1987* ('Act'), including the balanced application of the strategies and policies of the Monash Planning Scheme ('Planning Scheme') and is otherwise in conformity with the provisions of the Planning Scheme and the Act;
 - the proposed orders will not result in any change to the proposed development which would materially affect any person other than the parties to the proceeding.
- 8 Based on the information available to the Tribunal, I consider it is appropriate to give effect to the settlement reached by the parties pursuant to section 93(1) of the *Victorian Civil and Administrative Tribunal Act 1998*.

J Perlstein
Member



APPENDIX A

PERMIT APPLICATION NO:	TPA/54607
LAND:	15 Anzed Court MULGRAVE VIC 3170
WHAT THE PERMIT ALLOWS:	
<ul style="list-style-type: none"> Construction of a warehouse, office building with six occupancies, display of advertising signage and six lot subdivision. <p>in accordance with the endorsed plans.</p>	

CONDITIONS

Amended Plans Required

- 1 Before the development starts, three copies of 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 Marcos Jose Pty Ltd dated 23/11/2023 – SK1, but modified to show:
 - (a) Full set of development plans showing dimensioned elevations, floor, signage and sectional plans with finished floor levels.
 - (b) A revised site plan showing Council street trees to be numbered 1-5 with tree 2 and tree 3 to be removed.
 - (c) The proposed crossover to provide a 3.0 metres setback from Council street tree 1.
 - (d) Revised subdivision plan.
 - (e) The car parking spaces adjacent to the entrance of warehouses 2-6 to comply with Clause 52.06.
 - (f) Details of all driveway grades and parking bay grades to be detailed on the plan.
 - (g) The loading area of Unit 1 relocated to provide 1.2 metres setback from the eastern wall of Unit 1.
 - (h) A detailed feature and level survey with proposed new footpath levels showing the lowering of the existing footpath across the access driveway of the site.



- (i) Details of the location of the retaining walls associated with the construction of the driveway in accordance with the root investigation study undertaken by Arbor Survey
- (j) Details of tree protective fencing to be provided to the mature *Corymbia maculata* (Spotted Gum) in the property frontage as recommended by Arbor Survey.
- (k) Trees to be retained numbered, and protective fencing shown surrounding all Council street-trees adjacent to the development and trees to be protected during the development in accordance with the Tree Management Plan required by Condition 4 of this Permit.
- (l) Location of existing vegetation on adjoining properties.
- (m) A Landscape Plan in accordance with Condition 3 of the permit.
- (n) A Tree Management Plan in accordance with Condition 4 of the permit
- (o) A Sustainable Management Plan in accordance with Condition 5 of the permit.
- (p) A Waste Management Plan in accordance with Condition 6 of the Permit.

All to the satisfaction of the Responsible Authority.

No Alteration or Changes

- 2 The development and use and the description of the use(s) as shown on the endorsed plans must not be altered without the 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 Landscape Plan must show:
 - (a) A survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan;
 - (b) A planting schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities;
 - (c) the location of any fencing internal to the site;
 - (d) planting to soften the appearance of hard surface areas such as driveways and other paved areas;



- (e) the location of any retaining walls associated with the landscape treatment of the site;
- (f) details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (g) The location of Tree Protection Zones and Tree Protection Fencing as required in the Tree Management Plan required under Condition 4;
- (h) An in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the Responsible Authority;

When approved the plan will be endorsed and will then form part of the permit.

Tree Management Plan

- 4 Concurrent with the submission of amended plans required by Condition 1 and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and approved by the Responsible Authority. The TMP must be prepared by a suitably qualified and experienced Arborist and must set out recommendations and requirements in relation to the management and maintenance of the *Corymbia maculata* (Spotted Gum) on the site, the Council street trees in Anzed Court and trees on adjoining properties.

The TMP must be approved by the Responsible Authority prior to the commencement of any works, including demolition and/or levelling of the site. The TMP must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites and detail the following to the satisfaction of the Responsible Authority ensuring the trees to be retained remain healthy and viable during construction:

- (a) A Tree Protection Plan drawn to scale that shows:
 - (i) Tree protection zones and structural root zones of all trees to be retained;
 - (ii) All tree protection fenced off areas and areas where ground protection systems will be used;
 - (iii) The type of footings within any tree protection zones;
 - (iv) Any services to be located within the tree protection zone and a notation stating all services will either be located outside of the tree protection zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the Project Arborist; and
 - (v) A notation to refer to the Tree Management Plan for specific detail on what actions are required within the tree protection zones.



- (b) Details of how the root system of any tree to be retained will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the Project Arborist.
- (c) Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority; and
- (d) Any remedial pruning works required to be performed on tree canopies located within subject site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur.

The recommendations contained in the approved tree management plan must be implemented to the satisfaction of the Responsible Authority.

Sustainable Design Assessment

- 5 Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainable Management Plan must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the Sustainable Design Assessment prepared by Sustainable Design Consultants Dated September 2022, except that the plan must be modified to show any changes required by Condition 1 of this planning permit.

Upon approval the Sustainable Design Assessment will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the Sustainable Design Assessment to the satisfaction of the Responsible Authority.

Waste Management Plan

- 6 Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan must be submitted and approved by the Responsible Authority. The plan must provide details of a regular private waste (including recyclables) collection service for the subject land and be prepared in accordance with the Multi-Unit and Commercial Developments Waste Management Plan Guide for Applicants. The plan must include the following:

- (a) The method and location of collection of all waste from the land;
- (b) Waste volume calculation and total waste generated per waste stream;
- (c) Frequency of Waste collection and permitted collection times;
- (d) Plans showing the location of bin storage areas, required bin storage equipment and features, number of bins and location of temporary bin storage at collection point(s);
- (e) Provision of bin cleaning equipment, washing facilities and sewer disposal within the waste storage area;



- (f) Type / Size of private waste vehicles);
- (g) Details of who will be responsible for taking out and returning bins to kerb (only use if collection is proposed from street); and

Construction Management Plan

7 Prior to the commencement of any site works (including demolition) 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 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's 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) – 7am to 6pm;
- Saturday – 9am to 1pm;
- Saturday – 1pm to 5pm (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.

Landscaping prior to occupation

8 Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained, to the satisfaction of the Responsible Authority.

No material near Council street-trees

9 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Council street-trees to be retained during the construction period of the development hereby permitted without the prior written consent of the Responsible Authority.

Loading and Unloading

10 All loading and unloading of vehicles must be carried out and be conducted in a manner that does not cause any interference with the circulation and parking of vehicles on the land, to the satisfaction of the Responsible Authority.

Amenity of Area

11 The amenity of the area must not be detrimentally affected by the use or development, through the:

- transport of materials, goods or commodities to or from the land;
- appearance of any building, works or materials;
- emission of noise; and
- storage of prescribed waste,

To the satisfaction of the Responsible Authority.



Car Parking and Driveways to be Constructed

- 12 Before the use starts or any building is occupied, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
- constructed to the satisfaction of the Responsible Authority;
 - properly formed to such levels that they can be used in accordance with the plans;
 - surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
 - drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;
 - line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.
 - Parking areas and access lanes must be kept available for these purposes at all times.

Use of car parking spaces and driveways

- 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.
- 14 Parking areas and access lanes must be kept available at all times to the satisfaction of the Responsible Authority.

Plant / Equipment or features on roof

- 15 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.

Drainage and Stormwater

- 16 The site must be drained to the satisfaction of the Responsible Authority. Stormwater must be directed to the Point of Connection as detailed in the Legal Point of Discharge report. Stormwater must not be allowed to flow into adjoining properties including the road reserve.
- 17 No polluted and/or sediment laden stormwater 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.

Easement

- 18 All service infrastructure (gas, water, electricity, etc) is to be removed off the easement.

Vehicle Crossovers

- 19 All new vehicle crossings are to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
- 20 Engineering permits must be obtained for new or altered or removal of vehicle crossings, works within the Road Reserve and for stormwater connections and these works are to be inspected by Council.

Completion of Buildings and Works

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

Signs not altered

- 22 The location and details of signs shown on the endorsed plans must not be altered without the written consent of the responsible Authority.

No Flashing Light

- 23 Signs must not contain any flashing light.

Signs within Land Boundary

- 24 All signs must be located wholly within the boundary of the land.

Sign Maintenance

- 25 All signs must be constructed and maintained to the satisfaction of the Responsible Authority.

Subdivision

- 26 The subdivision as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

Mandatory Conditions

- 27 The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas to each lot shown on the endorsed plan in accordance with that authority's requirements and relevant legislation at the time.
- 28 All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
- 29 The plan of subdivision submitted for certification under the *Subdivision Act 1988* must be referred to the relevant authority in accordance with Section 8 of that Act.



- 30 The owner of the land must enter into an agreement with:
- a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
 - a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
- 31 Before the issue of a Statement of Compliance for any stage of the subdivision under the *Subdivision Act 1988*, the owner of the land must provide written confirmation from:
- a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
 - a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

Statement of Compliance

- 32 Prior to the issue of a Statement of Compliance for this subdivision:
- (a) the development, including landscaping and storm water drainage works, must be completed in accordance with Planning Permit No. TPA/54607 to the satisfaction of the Responsible Authority;
- OR
- (b) the owner of the land to which this permit relates must enter into an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act 1987. In addition to the usual provisions, the agreement must provide for the following matters:
- (i) Except with the consent of the Responsible Authority, the land and any lot created by the subdivision of the land may only be developed in accordance with the development authorised in Planning Permit No. TPA/54607 and depicted in the plans endorsed under that permit;



- (ii) Each building shall not be occupied or used until all works, including landscaping and drainage for the respective building has been completed;
- (iii) Lodge with the Responsible Authority, a bond, bank guarantee or similar security equivalent to either;
 - 150% of the cost of landscaping each unfinished lot and/or the common property of the proposed development, or
 - \$5,000 per unfinished building
 whichever is the greater, for the satisfactory completion of the development of the land and the landscaping works.
- (iv) In the event that the landscaping works are not provided to the satisfaction of the Responsible Authority, the Responsible Authority may provide the landscaping works and deduct the cost thereof (including supervision) from any bond, bank Guarantee or similar security lodged pursuant to agreement;
- (v) The costs of the Responsible Authority in relation to the agreement are to be borne by the owner.

33 Prior to the issue of a Statement of Compliance, consent/advice from a registered Building Surveyor must be provided to Council to indicate that the location of the proposed subdivision boundaries comply with the Fire Separation Provisions of the Building Code of Australia, including separating walls and openings near boundaries, together with the requirements of the Building Regulations.

Yarra Valley Water Requirements

Water:

34 The owner of the subject land must enter into an agreement with Yarra Valley Water for the provision of water services.

Sewerage:

35 The owner of the land must enter into an agreement with Yarra Valley Water for the provision of sewerage services.

United Energy requirements

36 The plan of subdivision submitted for certification under the *Subdivision Act 1988* shall be referred to the Distributor in accordance with Section 8 of that Act.

37 The applicant shall provide an electricity supply to all lots in the subdivision in accordance with the Distributor's requirements and standards.



Notes: Extension, augmentation or rearrangement of the Distributor's electrical assets may be required to make such supplies available, with the cost of such works generally borne by the applicant.

- 38 The applicant shall ensure that existing and proposed buildings and electrical installations on the subject land are compliant with the Victorian Service and Installation Rules (VSIR).

Notes: Where electrical works are required to achieve VSIR compliance, a registered electrical contractor must be engaged to undertake such works.

Multinet Gas

- 39 A Statement of Compliance be obtained from Multinet Gas prior to the plan of subdivision being released from the Titles Office.

Permit Expiry Development

- 40 This Permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
- (a) The development has not started before two (2) years from the date of issue.
 - (b) 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*, the Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or:

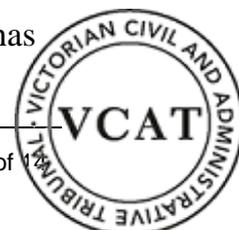
- (i) within six (6) months afterwards if the development has not commenced; or
- (ii) within twelve (12) months afterwards if the development has not been completed.

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

Permit Expiry Signs

Time for Commencement

- 41 Without the written consent of the Responsible Authority, this permit will expire unless the approved signs are displayed within 2 years of the issue date of this permit.
- 42 The Responsible Authority may extend the times referred to if a request is made in writing before the permit expires or:
- (a) within six (6) months afterwards if the display of the sign(s) has not commenced; or
 - (b) within twelve (12) months afterwards if the display of the sign(s) has not been completed.



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

Permit to Expire

43 The approved sign(s) of this Permit will expire 15 years from the date of issue of this permit.

Permit Expiry - Subdivision

44 This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:

- The plan of subdivision is not certified with two (2) years of the date of this permit; or
- The plan of subdivision is not registered within five (5) years of the date of certification.

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

--- End of Conditions ---

