

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P150/2023
PERMIT APPLICATION NO.TPA/54301

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987* (Vic); Monash Planning Scheme; General Residential Zone, Schedule 2 (GRZ2); Vegetation Protection Overlay, Schedule 1 (VPO1); Use and development for a convenience restaurant, business signage and access to a Transport Road Zone 2 (TRZ2). Built form response, height, bulk, and setbacks. Amenity including noise impacts, secluded private open space and overlooking. Traffic and car parking. Landscaping and deep soil planting.

APPLICANT	Tucker Projects Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENT	Desmond Ting
REFERRAL AUTHORITY	Head, Transport for Victoria
SUBJECT LAND	371-373 Blackburn Road MOUNT WAVERLEY VIC 3149
HEARING TYPE	Hearing
DATE OF HEARING	17, 18 & 20 July 2023
DATE OF ORDER	12 September 2023
CITATION	Tucker Projects Pty Ltd v Monash CC [2023] VCAT 1046

ORDER

Amend permit application

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

- Prepared by: Voda Building Services Pty Ltd
- Drawing numbers: 22001 – TP000 (Rev D), TP010 (Rev C), TP011 (Rev D), TP012 (Rev B), TP013 (Rev B), TP020 (Rev B), TP021 (Rev C), TP101 (Rev B), TP120 (Rev B), TP200 (Rev C), TP201 (Rev C), TP202 (Rev C), TP205 (Rev C), TP210 (Rev B) and TP300 - 302 (Rev A)
- Dated: 25 May 2023
- Prepared by: BBLA Consultants
- Drawing numbers: 2020.01 – 001 (Rev C), 601 (Rev C) and 901 (Rev C)



- Dated: 7 May 2023
 - Prepared by: Parkhill Freeman Pty Ltd
 - Drawing numbers: 22-038 C400 (Rev 1) and C502 (Rev 1)
 - Dated: 9 May 2023
- 2 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*, the permit application is amended by amending the hours of use to the following:
- Sunday to Wednesday – 10.00 am to 10.00 pm
 - Thursday to Saturday – 10.00 am to 11.00 pm

Permit granted

- 3 In application P150/2023 the decision of the responsible authority is set aside.
- 4 In planning permit application TPA/54301 a permit is granted and directed to be issued for the land at 371-373 Blackburn Road Mount Waverley VIC 3149 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
- Use and development of the land for a convenience restaurant in the General Residential Zone Schedule 2
 - Display of business and directional signage under clause 52.05
 - Alteration of access to a road adjacent to a Transport Road Zone 2

Peter Gaschk
Member



APPEARANCES

For Tucker Projects Pty Ltd: Chris Taylor, Solicitor with Planning and Property Partners Pty Ltd.

He called the following witnesses:

- Ross Leo, from Clarity Acoustics (Acoustics)
- Sam D'Amico, from Ratio Consultants (Planning)
- Brendon Burke, BBLA Consultants (Landscaping)

For Monash City Council: David Vorchheimer, Solicitor with HWL Ebsworth Lawyers. Instructed by Sonja Narduzza, Solicitor.

For Desmond Ting: No appearance

For Head, Transport for Victoria: No appearance



INFORMATION

Description of proposal	The proposal is for the use and development of the subject land at 371-373 Blackburn Road, Mount Waverley ('review site') for a convenience restaurant, display of signage and alteration of access to a road adjacent to a Transport Road Zone 2.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme ('Scheme')
Zone and overlays	General Residential Zone, Schedule 2 ('GRZ2') Vegetation Protection Overlay, Schedule 1 ('VPO1')
Permit requirements	Clause 32.08-2: To use the land for a Convenience Restaurant; Clause 32.08-9: To construct a building or construct or carry out works associated with a Section 2 use; Clause 52.05-13 (Signs): To construct or erect signs; Clause 52.29 (Land Adjacent to a Road Zone, Category 1): To create or alter access to a road in a Transport Road Zone 2 (TRZ2).
Key scheme policies and provisions	Clauses 11.01-1S, 11.01-1R, 11.02-1S, 13.07-1S, 15.01-1R, 15.01-2S, 15.014R, 17.01-1S, 17.02-1S, 18.02-1S, 18.02-2S, 18.02-2R, 18.02-4S, 19.03-3S, 21.05, 21.08, 21.11, 21.13, 22.04, 22.05, 22.08, 22.09, 22.13, 32.08, 42.02, 52.05, 52.06, 52.34, 55, 65.01 and 71.02.



Land description

The review site has a 31.8m frontage to Blackburn Road along its eastern boundary, a 19.1m frontage to Waverley Road along its northern boundary, a corner splay of 24.5m, a western boundary of 42.3m and 16.7m, and a southern boundary of 40.6m. The review site is irregular in shape and has a total site area of approximately 2,120sqm.

The subject land has previously been filled and sits higher than the adjoining properties to its south and west, with the ground level of the review site sitting more than 1.0m higher than adjacent residential properties.

The review site is currently developed with a single storey structure used as a car and dog wash facility. The main car wash building is located central to the site, with a small dog wash structure located adjacent to the southwestern corner. The remaining areas are comprised of car parking, access, and scattered vegetation along the perimeter of the property. No significant vegetation is present on the review site.

Waverley Road to the north is an arterial road (TRZ2) comprising four lanes with two-way traffic. A McDonald's convenience restaurant is opposite the review site at 519 Waverly Road. It includes a drive through facility and has vehicular access from Waverly and Blackburn Roads. It operates 24 hours, seven days a week.

To the north-east (diagonally opposite) is a 7-11 convenience restaurant store which operates 24 hours, seven days a week.

To the immediate east is Blackburn Road, which is a TRZ2, comprising six lanes with two-way traffic. Opposite this is a restaurant and other commercial uses and buildings. An extensive car park area is in front of these buildings.

To the south of the review site is a single storey dwelling at 375 Blackburn Road, Mount Waverley. Dwellings along Blackburn Road are one to two storeys in height.

Immediately south-west of the review site is 35 Iluka Crescent which contains two dwellings. The rear dwelling has its' secluded private open space and a pool to the rear of the land, directly adjoining the review site.

Immediately west of the review site is 536 Waverley Road which contains three double storey dwellings, with a common driveway located along its' western property boundary. Private open areas associated with these dwellings also adjoin the review site. Vehicular access to these dwellings is provided by Waverley Road.

Surrounding land is primarily zoned residential and developed with dwellings that sit in the GRZ2 and 3 zones or Neighbourhood Residential Zone. As noted above there is a small area of land within the Commercial 1 Zone, with commercial uses on each of the corners of Blackburn and Waverley Roads.

Tribunal inspection

Undertaken unaccompanied on 15 August 2023.

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 This proceeding concerns an application for review lodged by Tucker Projects Pty Ltd ('applicant') under section 77 of the *Planning and Environment Act 1987* (Vic) ('Act') in relation to the decision of the responsible authority ('council') to refuse to grant a permit in Planning Permit Application No. TPA/54301 ('planning application').
- 2 The planning application sought the use and development of the land at 371-373 Blackburn Road, Mount Waverley ('review site') for a convenience restaurant, display of signage and alteration of access to a road adjacent to a Transport Road Zone 2 ('proposal').
- 3 Council confirmed that its position and Grounds of Refusal remain unchanged despite the amended plans circulated by the applicant prior to the hearing. These plans now form the substituted plans².
- 4 The applicant also sought to amend the hours of use to: Sunday to Wednesday – 10.00 am to 10.00 pm and Thursday to Saturday – 10.00 am to 11.00 pm. I granted leave at the hearing to amend the permit application to reflect these changes³. Council considered the reduced hours were a positive change but did not alter its position.
- 5 On 6 January 2023, council determined to issue a Notice of Refusal to Grant a Permit ('Notice of Refusal'), on the following grounds. These remain the key concerns of the council.
 - The proposal is inconsistent with the purpose of Clause 32.08 General Residential Zone, and the objectives of Clause 22.09 Non-Residential Use and Development in Residential Areas.
 - The proposal is inappropriate having regard to the proper and orderly planning of the area.
 - The proposal will have an adverse impact on the visual amenity of the area due to the lack of satisfactory landscape treatment of the site.
 - The proposal will have an adverse amenity impact to the adjoining residential properties due to the lack of adequate landscape setbacks to both abutting residential properties and street frontages.
 - The proposal has not been designed to appropriately respond to the residential interfaces.

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 this material will be cited or referred to in these reasons.

² See order 1 above.

³ See order 2 above.



- The proposal is an overdevelopment of the site.
- 6 The respondent Mr Desmond Ting is a party to this matter but chose not to appear, asking the Tribunal to consider his Statement of Grounds as submitted. I note Mr Ting supports the council’s refusal and submits concerns regarding waste odour issues and site management. One other Statement of Grounds was lodged with the Tribunal, but this person did not wish to appear at the hearing. I have considered these Statement of Grounds in my assessment.
- 7 The applicant does not agree with the council and respondent and submits the review site is a ‘good candidate’ for a convenience restaurant. The applicant summarised its position in its written submission as follows.
- Being a corner site on a major intersection of two substantial arterial roads;
 - Replacing a long established and currently operating 24-hour car wash;
 - Being of a substantial size at 2,120 sqm;
 - Notwithstanding the residential zoning setting, the four corners of the intersection present as an established commercial node. The continued non-residential use of the site complements and is consistent with this existing setting, which includes a McDonalds convenience restaurant (operating 24 hours a day), a 7-Eleven (operating 24 hours a day) and other food and drink premises.
 - Having existing available vehicle access to both arterial roads, and accordingly without the need for vehicles to rely on the local residential network;
 - Location on the PPTN; and
 - Absence of planning controls that constrain development such as the heritage overlay.
- 8 The applicant also relies on the written and oral evidence of:
- Sam D’Amico, in relation to town planning;
 - Brendon Burke, in relation to landscape; and
 - Ross Leo, in relation to noise issues.
- 9 I note council referred the planning application to the Head, Transport for Victoria (Ref: 41132/22) as a Determining Referral Authority (‘authority’). On 6 December 2022, the authority confirmed that it did not object to the grant of a planning permit, subject to the inclusion of conditions on any planning permit that may be issued. I note these conditions have been included in the council’s circulated draft conditions.

The Proposal

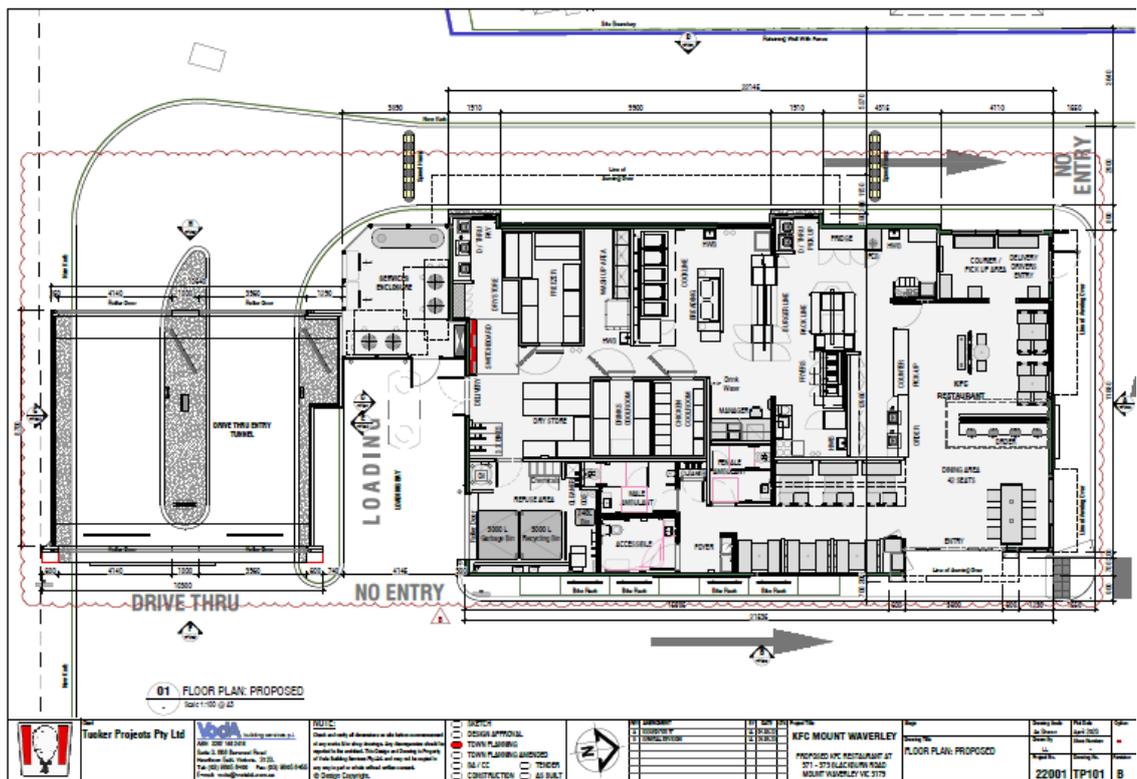
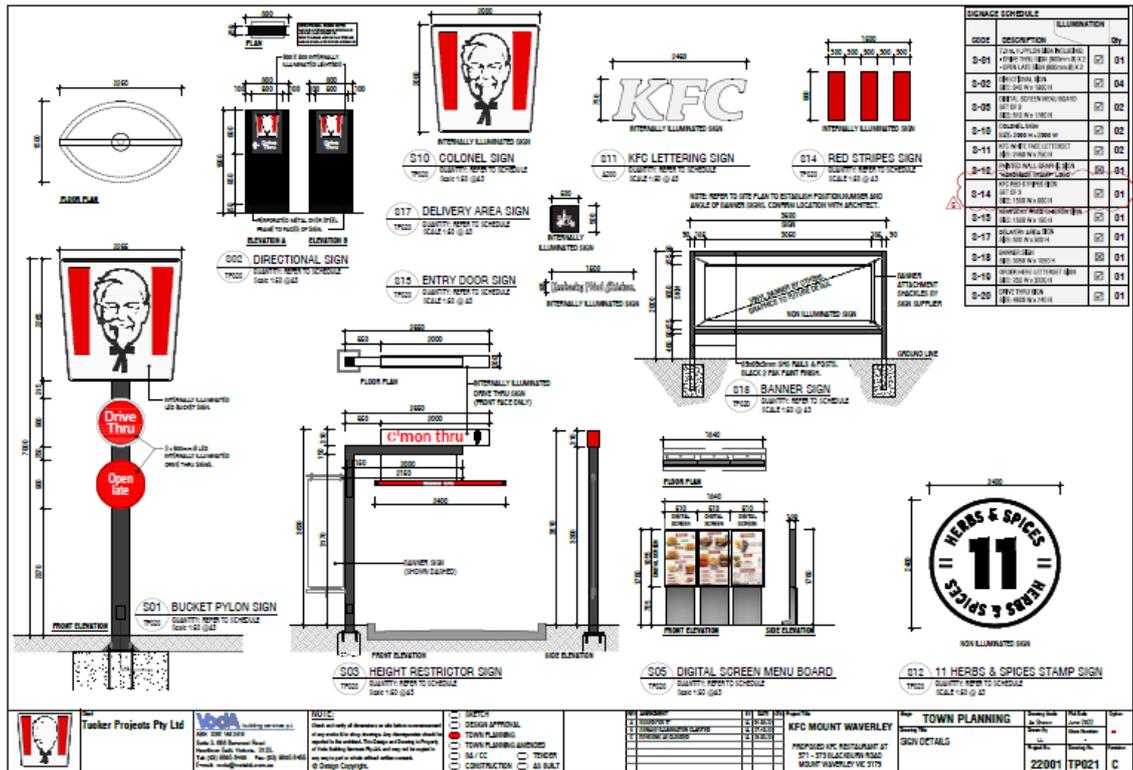
10 The proposal described in the council's written submission follows.

The Proposal as detailed in the Amended Plans comprises:

- (a) a single storey building generally sited within the western portion of the Subject Land with a maximum overall height of 6 metres and total floor area of 301m² including:
 - (i) kitchen, freezer and cool room areas;
 - (ii) pay and pick up stations;
 - (iii) a delivery lounge;
 - (iv) a waste room;
 - (v) male, female and accessible toilet facilities;
 - (vi) service area;
 - (vii) restaurant area with 42 internal seats;
- (b) a loading bay, refuse storage areas and services to the rear of the building;
- (c) a drive through area wrapping adjacent to the southern and western boundaries, including:
 - (i) a drive through entry tunnel with a maximum width of 10,640mm, length of 8700mm and height of 3600mm;
- (d) provision of 14 car parking bays (including 1 accessible car parking bay) located adjacent to the northern and eastern boundaries;
- (e) provision of 7 bicycle spaces, with 3 of those bicycle spaces being located to the rear of the building intended for use by employees;
- (f) provision of new landscaping along the perimeter of the Subject Land to the exclusion of the existing access from Blackburn Road and Mount Waverley Road, and the creation of a new footpath at the corner splay;
- (g) erection of a new 2.5 metre high acoustic fence along the southern and western boundaries;
- (h) erection of 19 signs including:
 - (i) 1 pylon sign with a height of 7 metres comprising 1 internally illuminated LED bucket sign and 2 x 900mm internally illuminated LED drive thru signs;
 - (ii) 7 traffic signs;

11 The proposal requires the complete demolition of the existing car and dog wash facility, hard stand areas, kerbing and existing timber fences and removal of existing vegetation. The proposal also seeks to use the existing crossover locations at Blackburn and Mount Waverley Roads.





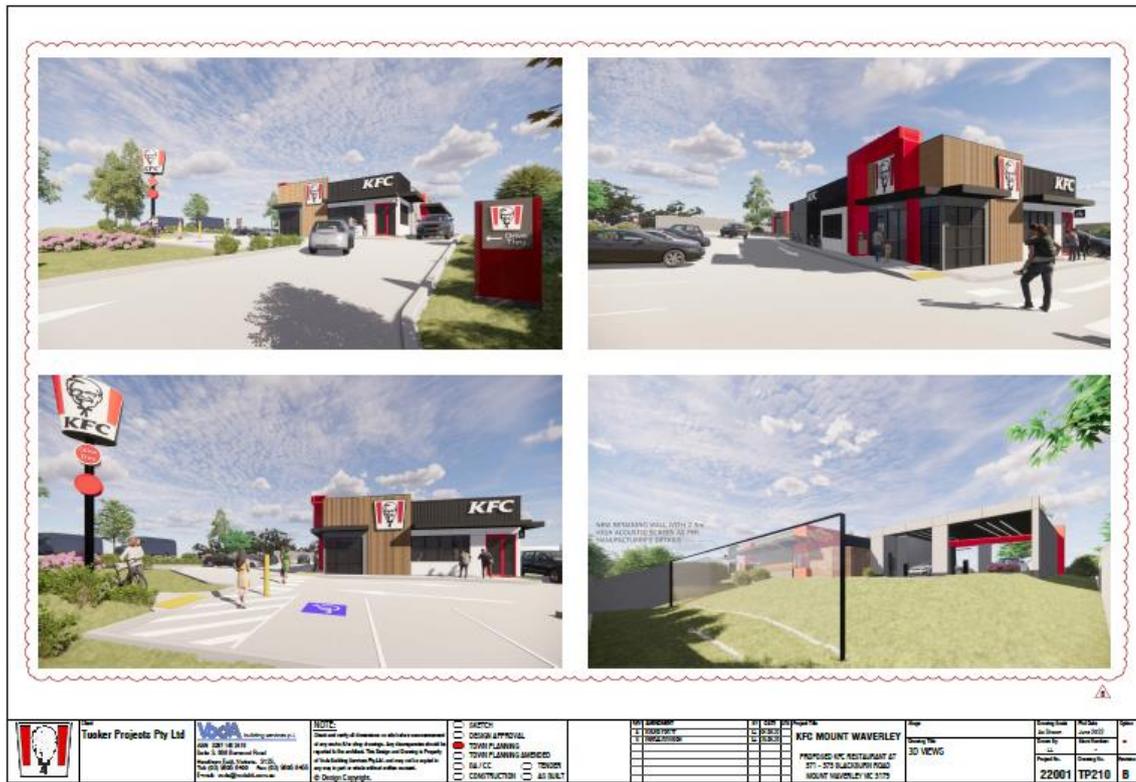
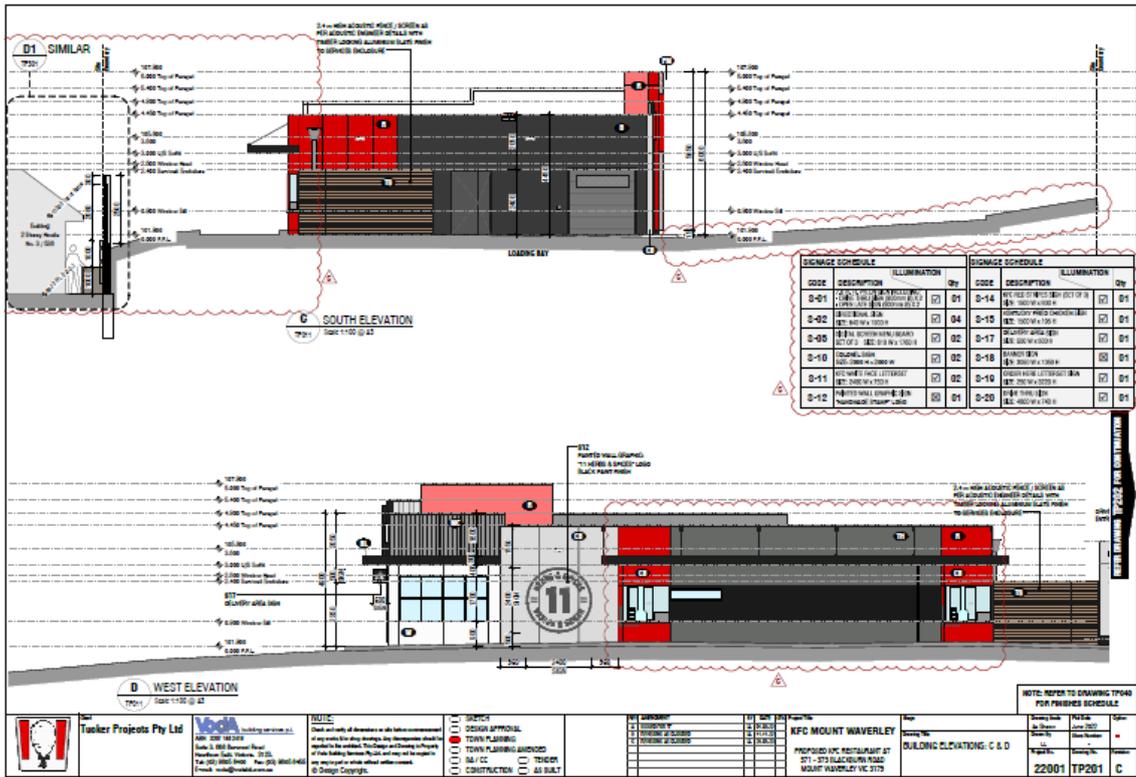


Figure 1: Perspectives, Site Layout and Elevation Plans – Source: Substituted Plans



WHAT ARE THE KEY ISSUES?

- 13 I must determine whether the proposal provides an acceptable response to its strategic planning policy context and appropriately addresses neighbourhood character and landscape setting. I must also consider whether the proposal would result in acceptable amenity impacts on neighbours and the public realm and provides appropriate vehicle access and parking on site. Additionally, if a permit is to be granted, I must also address what (if any) conditions should be included.
- 14 Having regard to council's Grounds of Refusal and the submissions and evidence of the parties, the following questions/key issues are relevant to my determination.
- Is the proposed use appropriate in the GRZ2?
 - Does the proposal result in an acceptable design/landscape outcome in the VPO1?
 - Does the proposal result in unacceptable noise or other amenity impacts?
 - Is the proposed signage appropriate?
 - Are the car parking and traffic movements satisfactory?
- 15 Having considered the key issues, submissions, and evidence of the parties, including my site visit, I find the proposal will provide a satisfactory planning outcome under the relevant Scheme provisions, subject to the detailed permit conditions I have included in Appendix A to this decision.
- 16 My findings and detailed reasons are provided under Key Issues below.

PROCEDURAL ISSUES

- 17 The applicant sought to rely on circulated amended plans, including updated landscape plans and civil drawings and further memorandum dated 10 May 2023, prepared by Ross Leo acoustic engineer, dated 25 May 2023.
- 18 Council did not oppose the substitution of these plans and memorandum. The Tribunal provided oral consent to the substitution of these documents. The hearing proceeded on that basis.
- 19 The applicant also sought to amend the application regarding the hours of operation to:
- Sunday to Wednesday 10am to 10pm; and
 - Thursday to Saturday 10am to 11pm.
- 20 Council did not oppose this change. This Order confirms both amendments to the lodged planning application.

STRATEGIC CONTEXT AND PHYSICAL SETTING

- 21 As noted above the review site is zoned GRZ2. Key purposes of the zone encourage development that respects the neighbourhood character of the area, diversity of housing types and housing growth and consideration of educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.
- 22 Clause 32.08-14 of the GRZ2 also notes that sign requirements are within ‘Category 3’ (High amenity areas – medium limitation) of Clause 52.05.
- 23 The review site is also in the VPO1 where key purposes include protecting areas of significant vegetation, ensuring that development minimises loss of vegetation, preserving existing trees and other vegetation, recognising vegetation protection areas as locations of special significance and importance, maintaining, and enhancing habitat corridors for indigenous fauna, and encouraging the regeneration of native vegetation.
- 24 I have also outlined key policy settings in the Information section above that I consider are relevant matters in my consideration of this proposal. A detailed description of the physical setting of the subject site is also provided above. This description is consistent with the party’s submission and evidence.
- 25 I note council placed emphasis on the relevance of clause 22.09 - Non-Residential Use and Development in Residential Areas. I agree this policy is relevant.
- 26 Relevant objectives of clause 22.09 include:
- (a) Ensure that development is appropriate having regard to the residential environment of the surrounds;
 - (b) Ensure that the amenity of the neighbourhood is not adversely affected by a business conducted in a residential area; and
 - (c) Ensure that all built form in residential areas is respectful of residential character.
- 27 Clause 22.09-4 also sets out a range of ‘performance criteria for non-residential uses and development’, including a convenience shop, restaurant and take away food premises. Relevant landscape criteria for the proposal includes:
- (a) Landscaping to be consistent with garden character of the neighbourhood;
 - (b) Buffering of car parking areas; and
 - (c) Retention of canopy trees.
- 28 Other policy settings in the Scheme reflect and support these clause objectives and performance criteria. For example, clause 15.01-5S



reinforces the need to ‘recognise, support and protect neighbourhood character’ through the following strategies:

- Support development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character.
- Ensure development responds to its context and reinforces a sense of place and the valued feature and characteristics of the local environment and place by respecting the:
 - Pattern of local urban structure and subdivision.
 - Neighbourhood character values and built form that reflect community identity.

29 Clause 21.01 introduces the notion of ‘Garden City Character’ where:

- Dominant features of the garden city character include high canopy trees, leafy and low-rise suburbs, well vegetated private gardens, and wide streets with street trees; and
- The garden city vision aims to maintain and enhance the established canopy treed environment throughout the municipality, continuing its significance in defining the character of Monash.

30 Clause 22.01 applies to the review site and all residential zoned land and identifies the subject land is within the ‘Garden City Suburbs Northern Areas’.⁴ The ‘preferred character’ sought in the Garden City Suburb - Northern Areas includes:

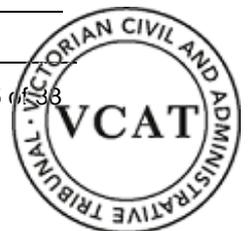
- (a) development to take place within a pleasant leafy framework of well-vegetated front and rear gardens and large canopy trees;
- (b) provision of generous setbacks;
- (c) new development will be screened from the street and neighbouring properties by well planted gardens that will ensure the soft leafy nature of the street is retained; and
- (d) gardens will consist of open lawns, planted with a mix of native and exotic vegetation and trees.

31 Decision Guidelines under this clause are expressed at clause 22.01-5.

32 The VPO1 applies to a substantial portion of the municipality and recognises the nature and significance of vegetation to be protected. Key objectives in the overlay seek to ensure that new development complements the Garden City Character of the neighbourhood. Key purposes seek to protect areas of significant vegetation, minimise loss of vegetation and preserve existing trees and vegetation.

33 Clause 12.05-2S reinforces these landscape themes and seeks to ensure significant landscape areas are protected, that new development does not detract from the natural qualities of significant landscape areas, and existing

⁴ See Map 1 in clause 22.01 of the Scheme: ‘Residential character types.’



landscape qualities and natural landscape are recognised for their aesthetic value.

IS THE PROPOSED USE APPROPRIATE IN THE GRZ2?

34 Council submits the proposal is inconsistent with the existing Garden City Character, the purposes of the GRZ and relevant objectives of clause 22.09.

It says:

- (a) The Proposal does not meaningfully contribute to the natural landscape and garden city character of the area, and will result in the removal of existing vegetation in lieu of a similar provision of new vegetation;
- (b) There is limited policy basis for directing non-residential uses to the Garden City Suburbs (Northern) Area;
- (c) The Proposal does not contribute to the existing garden city character and the Garden City Suburbs (Northern) Area characteristics as there is limited capacity to provide meaningful landscaping within side, rear and street setbacks.
- (d) The Proposal is inconsistent with the existing garden city character as the built form relies on four (4) large and medium canopy trees to be planted along the frontages to Blackburn Road and Mount Waverley Road to minimise bulk; and
- (e) The use and development are inappropriately located and incompatible with surrounding residential uses given its impact and overbearing presentation to areas of private open space at five direct residential abuttals. This is at odds with the consolidated residential precinct that is otherwise characterised by single-story and double-storey detached houses within a garden suburban context.

35 Regarding its physical setting, council submits the proposal falls short of the performance and locational criteria for non-residential uses under clause 22.09-4. It says the proposal does not respect its residential context that includes five sensitive residential abuttals and will reinforce a concentration of non-residential uses in this location. It also notes the review site is not located ‘within or at the edge of an activity centre’ that would weigh in its favour under the policy settings outlined above.

36 Council is also concerned the proposal represents an ‘overdevelopment’ of the review site. It referred me to the existing McDonald’s restaurant which operates opposite at 519 Waverley Road, Mount Waverley. Noting that site has a similar layout and building scale on an area of approximately 3,800sqm, whereas the review site was 60 per cent smaller.

37 The applicant does not agree with council’s assessment and submits the non-residential use of the review site ‘is consistent’ with its physical context that includes ‘a McDonalds convenience restaurant (operating 24 hours a day), a 7-Eleven (operating 24 hours a day) and other food and



drink premises.’ It also notes the review site is well located with access to two arterial roads and is situated in the PPTN.

38 The applicant also relies on the strategic planning evidence of Mr D’Amico.

39 Mr D’Amico notes there is capacity to consider non-residential uses in the GRZ2, subject to ‘appropriate locations.’ It is Mr D’Amico’s evidence the review site is ‘well suited’ for the proposed development, noting:

- The site is located on the corner of two arterial roads.
- It is a large site by urban terms, yielding an area of approximately 2,120sqm, thereby enabling flexibility in design.
- Is located at an intersection that is developed with a range of non-residential uses.
- The proposal will not result in a conflict between nearby residential land uses or other commercial uses nearby. The proposed uses are considered compatible with both the residential and other commercial related uses within the surrounding area.
- Replaces an existing non-residential use that operates 24 hours a day, 7 days a week.

40 Mr D’Amico has also included a detailed assessment of the proposal against the performance and locational criteria for non-residential use and development expressed at clause 22.09-4. His assessment includes consideration of urban design, car parking and landscaping criteria. He concludes the proposal is consistent with the policy objectives and criteria expressed in this clause.

My Findings

41 I acknowledge the council’s concerns regarding the proposed development and the residential zoning and physical abuttals of the review site to sensitive residential interfaces.

42 However, I accept there are numerous examples of convenience restaurants in similar urban locations with sensitive residential interfaces, as are confronted by this proposal on the review site. The McDonald’s restaurant and 7-11 convenience store located to the north and north-east of the review site are examples of this setting.

43 I note these existing uses are in similar residential zoning conditions, operate 24 hours a day and contain similar built form scale, road access points and drive through facilities at this busy and heavily urbanised road intersection.

44 It is significant the proposal was referred to the Head, Transport for Victoria who did not object to the proposed access arrangements to the review site. Providing permit conditions were imposed requiring left in-left out access arrangement for Waverley and Blackburn Roads, associated



signs and line marking. Council's traffic engineers also did not oppose the proposal on traffic and parking access requirements.

- 45 Regarding the zone purposes and associated policy context expressed in clause 22.09, I have not been persuaded the proposal would be inconsistent with the purposes of the GRZ2. In this regard I accept Mr D'Amico's assessment and evidence on these matters.
- 46 Mr D'Amico opines the proposal will provide new local employment opportunities associated with construction and staffing of the new convenience restaurant. It will also remove an older non-residential use and building form, that Mr D'Amico observes appears to be nearing its useful life expectancy, while operating over 24 hours, seven days a week. The proposal will operate with reduced hours. I consider this to be a positive amenity outcome to residential properties abutting the review site.
- 47 I am also satisfied the corner location offers opportunity to access the site from the arterial roads without using the local road network that services the existing residential areas located beyond the review site.
- 48 Importantly, this is a new proposal on the review site that will use contemporary building materials and provide a site specific design layout with increased building setbacks and landscape opportunity. It also provides an opportunity to address amenity impacts arising from the current car and dog wash facility, with improved acoustic fencing around the perimeter of the site and between the sensitive residential interfaces to the south and west.
- 49 I consider these matters to be a positive planning outcome and will result in net community benefit.
- 50 I consider the key issue rests on whether the scale of the built form and use will adversely impact the character and amenity of the area. In this regard, I have not been persuaded that the proposal represents an overdevelopment of the site.
- 51 I am satisfied the proposed building form is acceptable in terms of single storey height (maximum height of 6.0m) and floor space allocation (301sqm on a site area of 2,120sqm) and provides an appropriate design response to the existing and preferred character setting sought by the policy setting I have described above.
- 52 Clause 22.09 seeks to 'Locate discretionary non-residential uses in residential areas adjacent to existing activity centres and on higher order and busier streets and roads, and particularly on corner sites.' While I accept council would prefer to see this proposal located adjacent to an existing activity centre, the existing intersection provides a robust urban and commercialised context for the proposal on the review site.
- 53 Importantly, I also find the proposed building setbacks and landscape treatment and setting to the proposed built form will provide an appropriate



visual buffer to the surrounding residential hinterland. I find this outcome is consistent with clause 22.09 design objectives that seek to ‘Provide appropriate buffers and interface between commercial, residential and industrial land uses.’

- 54 Having considered the submissions and evidence I am satisfied the proposal has demonstrated appropriate strategic planning policy support and is an appropriate use on the review site located in the GRZ2.

DOES THE PROPOSAL RESULT IN AN ACCEPTABLE DESIGN/LANDSCAPE OUTCOME IN THE VPO1?

- 55 Council submits the proposal will not provide meaningful contribution to the natural landscape and Garden City Character, noting it removes existing vegetation on the review site. It submits the side, rear and street setbacks are too narrow given the amount of hard stand proposed across the site.
- 56 Council also considers the built form relies too heavily on four medium to large canopy trees to be planted along the frontages to Blackburn and Mount Waverley Roads.
- 57 Council also notes the objective to be achieved by the VPO1 is to conserve significant treed environments and ensure that new development complements the Garden City Character of the neighbourhood. While it accepts the amended landscape plan presented by Mr Burke is an improvement to the submitted application, it considers the proposed landscape setbacks are insufficient to allow for deep soil planting on the review site and will fall short of the VPO1 purposes and associated policy settings.
- 58 The applicant does not agree with council on this matter. It submits the amended plans provide ‘generous’ building setbacks from all site boundaries that enable meaningful landscape outcomes on the site. It notes that landscaping will cover approximately 667sqm of the review site and represents a significant improvement on the existing site conditions.
- 59 The applicant also relies on the landscape evidence of Mr Brendon Burke.
- 60 It is the evidence of Mr Burke that the amended site layout plan provides for:
- Increased the width of garden beds along the western, northern, and eastern boundaries.
 - Increased tree planting for screening purposes along the western boundary.
 - Increased the area of garden beds along Waverley Road.
 - Increased understory planting (shrubs) along the Waverley Road and Blackburn Road frontages.



My Findings

- 61 I note that Mr Burke states the revised landscape plan includes a total of 33 trees with varying heights and forms to be introduced onto the review site, including six large native trees that have the potential to reach heights of 20.0m or more at maturity.
- 62 It is Mr Burke’s evidence the plan responds appropriately to the Garden City Character by including canopy trees and a diverse range of native and exotic shrubs, ground covers, native grasses, and ground cover species. He considers the plan creates a ‘comprehensive garden scheme’ on the review site.
- 63 The revised landscape plan Mr Burke relies on is provided below.



Figure 2: Revised Landscape Plan – Source: Brendon Burke’s Evidence Statement Appendix 1

- 64 Having reviewed this plan I note that three lemon scented gums are proposed along the Blackburn Road frontage. The plan indicates these will grow up to 20.0m with a canopy spread of 8.0m. A further three lemon scented gums are proposed along the site’s southern boundary, adjoining the residential property at 375 Blackburn Road.
- 65 Four ornamental pears (‘Edgedell’) are proposed to the Waverley Road frontage in the north-west corner. The plan indicates these varieties will grow up to a height of 12.0m with a canopy spread of 3.0m. A further

ornamental pear ('Capital') is included in this area facing Waverley Road, with height of 8.0m and canopy spread of 6.0m.

- 66 Along the sensitive western and southern residential interface, the plan proposes a dense planting of natives that includes five lightwood trees that can grow up to 8.0m with a 7.0m spread and further five ornamental pears (Capital) adjoining the properties at 1 & 2/536 Waverley Road. I am satisfied the garden bed widths to the sensitive southern and western boundaries are sufficient to accommodate a substantive planting scheme as proposed by Mr Burke.
- 67 The proposed building form on the review site will have a maximum height of 6.0m. I accept submissions that the built form on the review site will sit above the residential properties located to the west due to the existing topography. However, I find the proposed planting treatment I have referenced above, combined with the 2.5m high acoustic fence, will provide some meaningful screening and will help filter views of the built form on site. Additionally, I am satisfied the planting treatment proposed in the south-west part of the site will enable appropriate filtering of vehicle lights as they traverse from Blackburn Road and make their way through to the take away food service area.
- 68 I note that Mr D'Amico considered the impact of the revised landscape treatment and concluded the 'proposed landscape areas will be sufficient to enable the establishment of vegetation that complements and softens the built form when viewed from the street.' I agree with this assessment.
- 69 Having considered the submissions and evidence I am satisfied the proposal will result in an acceptable design/landscape outcome on the site as sought by the purposes of the VPO1 and associated policy settings in the Scheme.

DOES THE PROPOSAL RESULT IN UNACCEPTABLE NOISE OR OTHER AMENITY IMPACTS?

- 70 Council submits the proposed use will result in unreasonable noise that will impact existing residential uses located to the south and west. Council says the proposed 2.5m height of the acoustic fence required along these boundaries to attenuate noise impacts will have significant impact on the liveability and useability of adjacent private open spaces, particularly properties along the western boundary. It says the amended shadow diagrams at 9am demonstrate this.
- 71 Council is also concerned the proposed acoustic fence will not achieve appropriate noise amelioration to the six sensitive residential interfaces at 375 Blackburn Road, 2/35 and 37 Iluka Crescent and 1-3/356 Waverley Road.
- 72 Council is particularly concerned there will be an intensification of noise from the proposal in comparison to the noise emanating from the existing car and dog wash operation. It acknowledges the car and dog wash facility



operates 24 hours, 7 days a week. However, it says this existing use generates a low level of traffic and noise, particularly during the evenings, which is more consistent with the surrounding residential zones. Council is also concerned the acoustic assessment has failed to address noise impacts of the proposed use to the upper levels of the neighbouring and adjoining properties.

- 73 The applicant relies on the acoustic evidence of Mr Leo.
- 74 Mr Leo has undertaken a series of noise assessments on and around the site, including nearest noise sensitive receivers along the western boundary. It is the evidence of Mr Leo that existing background and ambient noise levels are dominated by existing traffic noise. He also notes that noise from the existing car wash is significant and exacerbated by breaks in the current boundary fencing along the western boundary.
- 75 Based on his noise assessment Mr Leo recommends the erection of a 2.5m high acoustic fence along the entire southern and western boundaries of the review site. He also recommends further 2.4m high acoustic screening fence internal to the site, to be placed at the western and southern ends of the building's service enclosure. The acoustic fencing/screen treatment is shown in the diagram below.

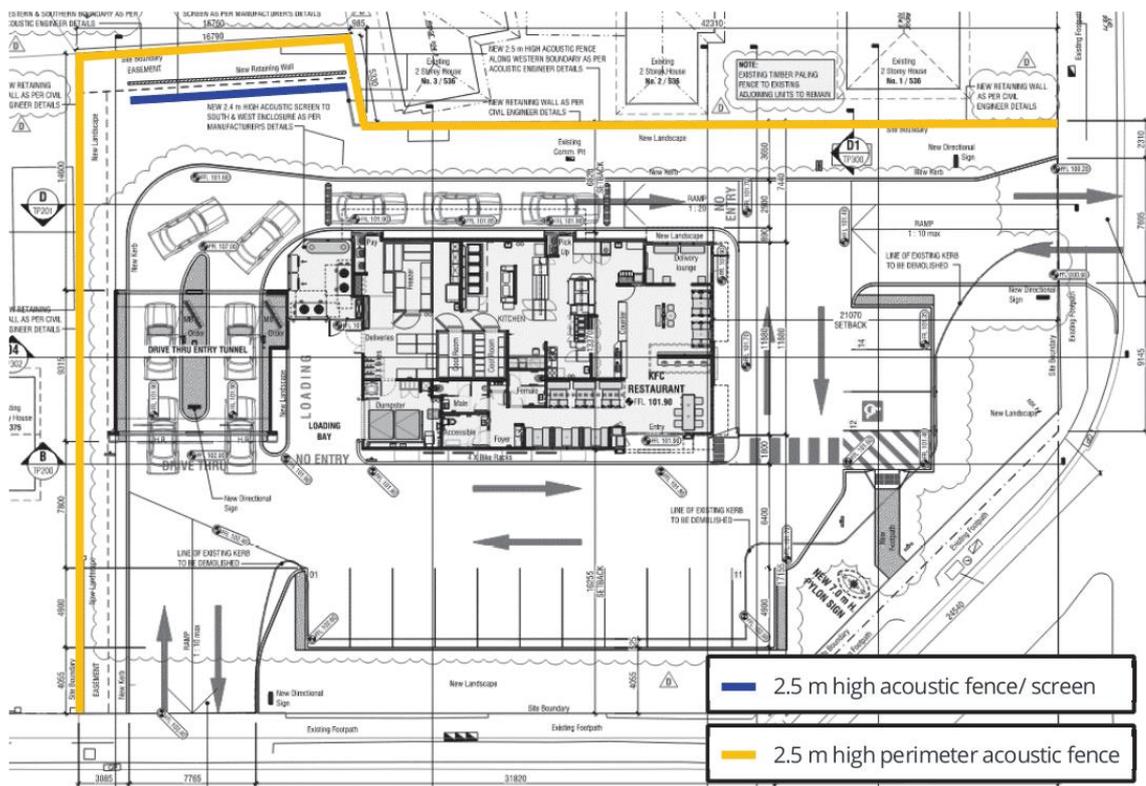


Figure 3: Location and extent of proposed acoustic fences – Source: Mr Leo’s Expert Evidence

- 76 Based on these noise mitigation measures; Mr Leo is satisfied that:



- Noise from deliveries, waste collection, the use of the Customer Order Devices (CODs) and operation of mechanical plant associated with the subject site is predicted to comply with the relevant Noise Protocol noise limits at the nearest affected dwellings
- Maximum noise levels from night time activity at the subject site are predicted to comply with the sleep disturbance criterion at the nearest affected dwellings.
- Noise from the proposed development is predicted to be significantly lower than the measured existing ambient noise levels in the vicinity of the subject site.

My Findings

- 77 The issue of appropriate noise amelioration when developing new proposals adjoining sensitive residential interfaces is an important consideration in this matter. Relevant scheme objectives and strategies identified at clause 13.07-1S seek to avoid or minimise adverse off-site impacts through appropriate land use separation, siting and building design. Decision guidelines at clause 65 include consideration of effects of new proposals on the environment, human health, and amenity of the area. While clause 13.05-1S seeks to assist the control of noise effects on sensitive land uses.
- 78 I also note clause 13.05-1S seeks to reduce unreasonable noise impacts by ensuring that development:
- Is not adversely impacted by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.
- 79 Mr Leo's acoustic assessment and evidence found that the existing amenity/noise levels on and immediately around the site are dominated by the existing traffic volumes. I accept this assessment. My inspection also confirmed his evidence the existing car and dog wash generates significant noise levels when operating. These are findings that are significant in my assessment of this matter.
- 80 It is also significant that the hours of use of the proposed convenience restaurant have been reduced from 24 hour - seven day week operations. I find this change will have a positive amenity impact on the current operations of the site.
- 81 Mr Leo was extensively cross-examined on his acoustic assessment and recommendations regarding the appropriateness of the 2.5m high acoustic fencing. He remained steadfast the acoustic fencing and screening treatment, combined with the setbacks of adjoining residential dwellings from the noise source, would appropriately address the noise impacts arising from the take away operations associated with the convenience restaurant.



- 82 In the absence of any other acoustic evidence and based on Mr Leo's written evidence and noise assessment data, I am satisfied the proposed acoustic fence and screening treatment along the south and west boundaries will satisfactorily address and ameliorate any adverse noise impacts to the abutting properties along these interfaces.
- 83 I have not been persuaded by council's submission that the 2.5m height of the proposed acoustic fencing along the western boundary will adversely impact the use, functionality and amenity of private open space areas associated with the existing dwellings located along this boundary.
- 84 I say this noting the existing fencing height along the western boundary is already at a height of 2.6m from natural ground level (confirmed by my inspection). Thus, the introduction of the 2.5m high acoustic fence is not a foreign design element to these existing properties along the western boundary.
- 85 Achieving a satisfactory planning outcome often requires a balancing of policy and design treatment outcomes on a site. In this case Mr Leo has recommended a 2.5m acoustic fence treatment to effectively address noise impacts. I am satisfied his evidence is well founded and this fencing height is appropriate and necessary to achieve balanced and satisfactory amenity/noise outcomes to these sensitive interfaces.
- 86 Council was concerned that the fence height may vary due to the slope conditions along the western boundary (topography includes a moderate slope from south to north of approximately 1.5m). I noted this slope variation during my inspection. However, I am satisfied the slope of the land along this interface has been appropriately considered by the applicant who took the Tribunal to relevant contours and levels contained in the civil plan drawing prepared by Parkhill Freeman, dated 9 May 2023.
- 87 In any event, I note that conditions 48-53 of the council's draft permit deal with the approval of an acoustic report and acoustic fencing requirements associated with the proposal. A follow up acoustic testing regime is required under these conditions within two months of the use commencing. This additional testing provides a suitable opportunity for the fencing height to be checked and corrected if/as required at the direction of the responsible authority. I consider this to be an appropriate and sensible approach to this matter.
- 88 Regarding visual bulk, I am satisfied the proposed building setback of 7.4m from the western boundary, combined with a landscape width of 3.6m, will provide an appropriate design response to the adjoining residential properties along this boundary. I note the buildings forming part of the dwellings at 1-3/536 Waverley Road are cut into their respective sites, and do not contain any habitable room windows at ground or upper level that face toward the review site. The building at 2/35 Iluka Crescent will be provided with a landscape setting and setback slightly under 9.0m, while

the southern boundary will be provided with a 3.0m wide landscaped setting. I am satisfied these design responses are appropriate to the amenity and visual outlook of the adjoining residential properties to these interfaces.

- 89 Having considered the submissions and evidence and subject to the conditions contained in the permit to issue, I am satisfied the proposal will result in acceptable noise and amenity outcomes, consistent with the Scheme requirements, policies, and strategies I have referenced above.

IS THE PROPOSED SIGNAGE APPROPRIATE?

- 90 The proposal includes the erection of 19 signs across the review site that includes:

- (i) 1 pylon sign with a height of 7 metres comprising 1 internally illuminated LED bucket sign and 2 x 900mm internally illuminated LED drive thru signs;
- (ii) 7 traffic signs;

- 91 I have provided an elevation plan of the proposed pole sign above. Greater detail on the signs is included on Drawings TP21/TP22.

- 92 Council accepts that any amenity impacts and visual concerns arising from the proposed signage could be appropriately dealt with by way of permit conditions. I agree.

- 93 Mr D'Amico provided a detailed analysis and assessment of the proposed signs against the relevant provisions of clauses 52.05 and 22.08. It is Mr D'Amico's evidence the proposed signs are appropriate given the location of the signs in relation to the abutting arterial roads, where 'advertising signage is a common theme and character of the broader commercial area'. I agree with this assessment and view.

- 94 I find the proposed signage is located appropriately and generally reflective of the use of the site and how customers can navigate the site. The signs are also consistent with the scale and height of commercial signage I observed in the area.

- 95 I am satisfied the number and location of the proposed signs will not result in visual clutter or disorder on the review site. Noting that conditions 40-47 of council's draft permit provide an appropriate set of requirements around managing glare and distraction to motorists. I have retained these conditions on the permit to issue.

ARE THE CAR PARKING AND TRAFFIC MOVEMENTS SATISFACTORY?

- 96 It is Council's submission that the proposal will result in an unacceptable planning outcome in terms of traffic flow and queuing considerations. More particularly, council submits the proposal will result in unreasonable queuing internally to attend the takeaway service and along both Blackburn Road and Waverley Road, past the review site.

- 97 Council is also concerned with headlight spill beyond the site into adjoining residential properties when vehicles enter the site from Blackburn Road. It is also concerned the amended plans only provide one pedestrian walkway which is partially wrapped around the northern edge of the proposed building. Council considers the location of the pedestrian walkway may compromise safety for pedestrians as they seek to traverse the internal vehicular circulation area.
- 98 The applicant notes the proposal does not seek to vary the parking requirements sought under clause 52.06 or the bicycle requirements sought under clause 52.34. The amended plans provide a surplus of car parking and bicycle parking.
- 99 I am satisfied the proposal satisfies the parking requirements sought under clauses 52.06 and 52.34.
- 100 The applicant accepts the proposal will generate more traffic than the existing car wash on the review site. However, it referred to Member Deidun's decision at *McIntyre v Monash CC* [2012] VCAT 1171. In this case that considered an application for a KFC replacing an existing car wash, Member Deidun found that it was 'reasonable to expect that a new use of such a site might result in an increase to traffic levels for the surrounding road network.'⁵
- 101 It is Mr D'Amico's evidence that 'Due to the location of car parking being adjacent to the main roads, there is unlikely to be any nuisance to adjacent residential properties as these are buffered by the building, landscaping, and acoustic attenuation measures.' I agree with this assessment for the reasons detailed above.
- 102 I find that the proposed car parking and traffic movements onto the adjacent arterial roads are also satisfactory. It is significant that the relevant determining authority (The Head, Transport for Victoria) did not object to the proposal but has required a 'left in - left out' access arrangement for Waverley & Blackburn Roads, associated signs and line marking. I note the council's draft permit has included this condition requirement, with associated conditions addressing signage and construction requirements.
- 103 Regarding council's concerns with queueing on site, I am satisfied the proposal has provided an appropriate design response that addresses some queueing capacity on the site. I am satisfied that the relevant determining authority, The Head, Transport for Victoria has not objected to the site layout in this regard and has not required an alteration to the proposed site access to the takeaway food services area.
- 104 Having considered the submissions and evidence from the parties on this matter, I find the proposed car parking and access arrangements are

⁵ At paragraph 17 of Member Deidun's decision.

satisfactory and appropriately address the relevant design requirements in clause 52.06.

WHAT CONDITIONS ARE APPROPRIATE?

- 105 Draft permit conditions were circulated between the parties, including an initial draft by council and a later marked up version by the council/applicant. These amended permit conditions were discussed between the parties at the conclusion of the hearing.
- 106 In deciding the conditions to be included on the permit, I have had regard to the marked up conditions provided to the Tribunal by council and the applicant, the further written submissions of the parties, in addition to matters which arise from my reasons detailed above.
- 107 Regarding lighting on site, I have included condition (10) drafted by the applicant. However, I have included specific reference to managing headlight spill/glare to adjoining residential properties along the western boundary.
- 108 Regarding council concerns over general amenity, odour, and litter management, I have included conditions 22-24, 25 and 26 to address these matters. Waste management is addressed at condition 5. While acoustic matters, including acoustic fencing, are addressed at conditions 1(a) and 55-60.
- 109 I have also undertaken some minor reformatting and editing of the remaining draft conditions which do not change their intent or purpose.

CONCLUSION

- 110 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions as set out in the attached Appendix A.

Peter Gaschk
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/54301
LAND	371-373 Blackburn Road MOUNT WAVERLEY VIC 3149

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Use and development of the land for a convenience restaurant in the General Residential Zone Schedule 2
- Display of business and directional signage under clause 52.05
- Alteration of access to a road adjacent to a Transport Road Zone 2

CONDITIONS

Amended Plans Required

- 1 Before the development starts, 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 Voda Building Services dated 25 May 2023, BBLA Consultants dated 7 May 2023 and Parkhill Freeman Pty Ltd dated 9 May 2023, but modified to show:
 - (a) The provision of acoustic fencing to the western and southern boundaries of the land with a minimum height of 2.5 metres above natural ground level of the land in accordance with Condition 53;
 - (b) The provision of two nominated and reserved vehicle waiting bays;
 - (c) The proposed retaining wall along the south west boundary is to be moved outside the area of the easement;
 - (d) The signs that facilitate the left-in / left-out arrangement to Blackburn Road and Waverley Road in accordance with Condition 55;
 - (e) A Landscape Plan in accordance with Condition 4; and
 - (f) A Waste Management Plan in accordance with Condition 5;
 - (g) A Construction Management Plan in accordance with Condition 7; and
 - (h) A Lighting Management Plan in accordance with Condition 10.All to the satisfaction of the responsible authority.



Hours of Operation

- 2 The use allowed under this permit may operate only during the following hours, except with the prior written consent of the responsible authority:
- Sunday to Wednesday - 10:00am to 10:00pm
 - Thursday to Saturday - 10:00am to 11:00pm

No Alteration or Changes

- 3 The layout, development and use and description of the use as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.

Landscape and Management Plans

Landscape Plan

- 4 Concurrent with the endorsement of plans 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 prior to the commencement of any works. When approved, the plan will be endorsed and will then form part of the Permit. The plan must be generally in accordance with the Landscape Concept Plan No. 601- prepared by Brendon Burke Landscape Architect (BBLA Consultants), but amended to show:
- (a) Changes required under Condition 1;
 - (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) Canopy Trees / Significant Planting on adjoining properties within 3 metres of the site;
 - (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) 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;
 - (h) The location of external lighting (if any); and
 - (i) Landscaping and planting within all open areas of the site.
- All to the satisfaction of the responsible authority.



Waste Management Plan

5 Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan must be submitted to and approved by the responsible authority. When approved, the plan will be endorsed and will then form part of the Permit. The plan must be generally in accordance with the Waste Management Plan prepared by MGA Traffic Pty Ltd (Updated Final version) dated 31 October 2022, but amended to show:

- (a) Any changes required under Condition 1; and
- (b) Restriction of waste collection hours to be between the Noise Protocol day and evening of 7:00am and 10:00pm, 7 days a week, unless otherwise agreed in writing by the responsible authority,

All to the satisfaction of the responsible authority.

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

Construction Management Plan

7 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 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:

- (a) Appropriate measures to control noise, dust, water, and sediment laden runoff;
- (b) Appropriate measures for the prevention of silt or other pollutants from entering 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 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).
- 8 No works are permitted on Sundays or Public Holidays except with the prior written consent of the responsible authority.
- 9 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.

Lighting Management Plan

- 10 Concurrent with the endorsement of plans required pursuant to Condition 1, a Lighting Management Plan prepared by a suitably qualified or experienced professional must be submitted to and approved by the responsible authority. The Lighting Management Plan shall include measures to address headlight glare to bedroom windows of abutting properties as and where required. When approved, the plan will be endorsed and will then form part of the Permit.
- 11 The provisions, recommendations and requirements of the endorsed Lighting Management Plan must be implemented and complied with to the satisfaction of the responsible authority and at no cost to the responsible authority.



Engineering Requirements

Stormwater Drainage

- 12 The site must be drained to the satisfaction of the responsible authority.
- 13 Stormwater must be directed to the Point of Connection as detailed in the Legal Point of Discharge report.
- 14 All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.

Sediment Laden Stormwater Run-off

- 15 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.

Engineering Approval Required

- 16 A plan detailing the stormwater drainage and civil works must be submitted to and approved by the Engineering Department prior to the commencement of any works. The plans are to show sufficient information to determine that the drainage and civil works will meet all drainage requirements of this permit.

Engineering Permits

- 17 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.
- 18 No work must be commenced in, on, under or over the road reserve without having first obtaining all necessary approval under the *Road Management Act 2004*, the *Road Safety Act 1986*, and any other relevant acts or regulations created under those Acts.
- 19 The full cost of reinstatement of any Council assets affected by the demolition, building or construction works, must be met by the permit applicant or any other person responsible for such works, to the satisfaction of the responsible authority.

Satisfactory Continuation

- 20 Once the development has started it must be continued and completed to the satisfaction of the responsible authority.

Completion of Buildings and Works

- 21 Once the development has started it must be continued and completed to the satisfaction of the responsible authority.

Amenity of Area

- 22 The amenity of the area must not be detrimentally affected by the use or development, through the:
- (a) Transport of materials, goods or commodities to or from the land;
 - (b) Appearance of any building, works or materials;
 - (c) Emission of noise, odour, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil; and
 - (d) Presence of vermin.

All to the satisfaction of the responsible authority.

- 23 Other than as shown on the endorsed plans, 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 to cause offence to persons outside the land to the satisfaction of the responsible authority.
- 24 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.

Odour

- 25 Before the use starts, odour filters shall be installed and maintained to control cooking, odours, fumes and smoke to the satisfaction of the responsible authority so as to minimise the emission of odours outside the food and drink premises and convenience restaurant.

Odour associated with the use must always comply with the EPA Guidelines to the satisfaction of the responsible authority.

Litter Management

- 26 The operators of the convenience restaurant must undertake a daily patrol to keep the site and adjoining road reserve areas of the site free from rubbish resulting from the use of the site, to the satisfaction of the responsible authority.

Car Parking and Accessways

- 27 Before the use starts, areas set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
- (a) Fully constructed;
 - (b) Properly formed to such levels that they can be used in accordance with the plans;
 - (c) Surfaced with an all-weather sealcoat;
 - (d) Drained, maintained and not used for any other purpose; and



(e) Line-marked to indicate each car space and all access lanes.

All to the satisfaction of the responsible authority.

- 28 Parking areas and access lanes must be kept available for these purposes at all times.
- 29 Construction of new vehicle crossovers or any modification to an existing vehicle crossover must be constructed to the satisfaction of the responsible authority and may require separate approval under the *Road Management Act 2004* from the Head, Transport for Victoria.

Landscaping and Tree Retention

- 30 Before the use starts, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the responsible authority and maintained to the satisfaction of the responsible authority.
- 31 All landscaping works shown on the endorsed landscape plan(s) must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the responsible authority.
- 32 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.

Location of Services and Equipment

- 33 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.
- 34 Motors for equipment and air-conditioning/heating units to be located to limit noise nuisance created to neighbours or insulated/sound proofed in accordance with any applicable EPA legislation.
- 35 Any required fire services, electricity supply, gas and water meter boxes must be discreetly located and/or screened to compliment the development to the satisfaction of the responsible authority. Any required services must be clearly detailed on endorsed plans forming part of this permit.

Use

- 36 All deliveries must be conducted so as not to cause any unreasonable disturbance to nearby residential properties and may only take place during the Noise Protocol day and evening period between 7:00am to 10:00pm.
Unless otherwise agreed in writing by the responsible authority.
- 37 All external lighting must be designed, baffled and located so as to prevent light from the site causing any unreasonable impacts on the locality, to the satisfaction of the responsible authority.



- 38 All security alarms or similar devices installed on the land must be in accordance with any current standards published by Standards Australia International Ltd and must be connected to a registered security service, to the satisfaction of the responsible authority.
- 39 No goods must be stored or left exposed outside the building to be visible from any public road or thoroughfare.

Signage

- 40 The location, layout, dimensions, structures and features of the approved sign(s) shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.
- 41 All signs must be constructed and maintained to the satisfaction of the responsible authority.
- 42 All signs must be located within the boundary of the land.
- 43 No flashing, intermittent or changing colour light is permitted to be displayed, except with the prior written consent of the responsible authority.
- 44 Signs must not be illuminated by external lights without the written consent of the responsible authority.
- 45 The intensity of lighting associated with the illumination of the advertising sign(s) must be limited so as not to cause glare or be a distraction to motorists in adjoining streets or cause a loss of amenity in the surrounding area to the satisfaction of the responsible authority.
- 46 The sign must not:
- (a) Dazzle or distract drivers due to its colouring;
 - (b) Be able to be mistaken for a traffic signal because it has, for example, red circles, octagons, crosses or triangles; and
 - (c) Be able to be mistaken as an instruction to drivers.
- All to the satisfaction of the responsible authority.
- 47 The sign must not obstruct the view of motorists, obscure traffic signals or constitute a road safety hazard in any way.

Acoustics and Noise

Acoustic Report

- 48 Prior to the endorsement of plans under Condition 1 of this permit, an Acoustic Report must be submitted to the responsible authority. The Acoustic Report must be generally in accordance with the VCAT expert evidence statement of Mr Ross Leo dated 3 July 2023 and demonstrate how the use and development will achieve compliance with the Noise Protocol to the satisfaction of the responsible authority.

Once submitted to and approved by the responsible authority, the Acoustic Report will be endorsed to form part of the permit. The Acoustic Report endorsed under this permit must be implemented and complied with at all times to the satisfaction of the responsible authority unless with the further written approval of the responsible authority.

- 49 Prior to the commencement of the use all acoustic treatments recommended by the endorsed Acoustic Report must be completed to the satisfaction of the responsible authority.
- 50 Within 2 months of the commencement of the use acoustic testing is to be carried out to ascertain whether the use complies with the noise level limits prescribed by the Noise Protocol. The testing is to be carried out by an independent acoustician approved by the responsible authority.
- 51 If the testing reveals that the use does not meet the Noise Protocol limits the buildings must be modified to make the use compliant with those noise level limits to the satisfaction of the responsible authority. After any modifications have been made, further acoustic testing must be carried out to ascertain whether the use complies with the prescribed noise limits to the satisfaction of the responsible authority.
- 52 Noise levels associated with the use must always comply with the Noise Protocol. Should the responsible authority deem it necessary, the owner and/or occupier of the land must submit an Acoustic Report to the satisfaction of the responsible authority which demonstrates compliance, or which outlines any measures considered necessary to achieve compliance. The recommendations of the Acoustic Report must be implemented to the satisfaction of the responsible authority. The endorsed plans must be amended to accord with the recommendations contained in the Acoustic Report to the satisfaction of the responsible authority.

Acoustic Fencing

- 53 Before the use starts, an acoustic fence along the southern and western boundaries is to be constructed in accordance with the endorsed plans and approved Acoustic Report. The design of the fence must be prepared in consultation with a suitably qualified acoustic engineer. The details of the design and acoustic qualities of the fence must be to the satisfaction of the responsible authority.

Loudspeakers

- 54 No external sound amplification equipment or loudspeakers are to be used for the purpose of announcements or broadcasts or similar purposes, to the satisfaction of the responsible authority.

Department of Transport and Planning Conditions (Ref: 41132/22)

- 55 Unless otherwise approved in writing from the Head, Transport for Victoria, prior to commencement of the development amended plans must be submitted to and approved by the Head, Transport for Victoria. When approved by the Head, Transport for Victoria, the plans must be endorsed by the responsible authority and will then form part of the permit. The plans must be drawn to scale with dimensions and two copies must be provided. The plans must be generally in accordance with the plans submitted but modified to show:
- (a) Self-enforcing left-in/left-out access arrangement for Waverley and Blackburn Roads, associated signs and line marking.
- 56 Prior to the occupation of the development, the crossings and associated signage shown on the endorsed plans must be completed and maintained to the satisfaction and at no cost to the Head, Transport for Victoria.
- 57 The permit holder must take all reasonable steps to avoid disruption to bus operation along Blackburn and Waverley Road during the construction of the development and the operation of the use. Any planned disruptions to bus operation during construction and mitigation measures must be communicated to and approved by the Head, Transport for Victoria eight weeks prior.
- 58 All advertising signs / lighting on site remain static to the satisfaction of the Head, Transport for Victoria (except the price boards at the drive through ordering points)
- 59 All lighting must be installed and maintained to ensure there is no glare. The lighting output must be no greater than 0.25cd/m² to the satisfaction of The Head, Transport for Victoria.
- 60 The 'banner sign' must be secured installed and maintained to ensure there is no public safety risk to the satisfaction of the Head, Transport for Victoria.

Permit Expiry

- 61 This permit will expire unless the approved signs are displayed within two years of the issue date of this permit, unless otherwise agreed in writing by the responsible authority.
- 62 The approved sign(s) of this Permit will expire 15 years from the date of issue of this permit.
- 63 In accordance with section 68 of the *Planning and Environment Act 1987* (Vic), this permit will expire if one of the following circumstances applies:
- (a) The development is not started before two years from the date of issue.



- (b) The development is not completed before four years from the date of issue.
 - (c) The use is not started before four years from the date of issue.
- 64 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:
- (a) Within six months afterwards if the development has not commenced;
or
 - (b) Within 12 months afterwards if the development commenced lawfully before the expiry of the permit.

– End of conditions –

