

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1436/2024
PERMIT APPLICATION NO. TPA/54185/A

APPLICANT Derrimut 247 Gym (Vic) Pty Ltd
RESPONSIBLE AUTHORITY Monash City Council
RESPONDENTS Inspire Apparel Pty Ltd
Sunridge Australia Pty Ltd
SUBJECT LAND 1686 Dandenong Road;
OAKLEIGH EAST VIC 3166
HEARING TYPE Compulsory conference
DATE OF HEARING 29 April 2025
DATE OF ORDER 2 May 2025

ORDER

Amend applications

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the permit application is amended by removing land at 1887-1889 Dandenong Road Oakleigh East Vic 3166 as part of the subject land.
- 2 Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the application is amended by removing land at 1887-1889 Dandenong Road Oakleigh East Vic 3166 as part of the subject land to which the review applies.

Amend permit

- 3 In application P1436/20254 the decision of the responsible authority is **set aside**.
- 4 Planning permit TPA/54185 issued on 13 December 2022 is amended and an amended permit is directed to be issued for the land at 1686 Dandenong Road OAKLEIGH EAST VIC 3166.
- 5 The permit is amended as follows:
 - (a) The description of what the permit allows is amended to read:

Planning scheme clause	Matter for which the permit has been granted
Clause 33.01-1	Use of the land for a Restricted Recreation Facility (Section 2 Use)



Clause 33.01-4	Construct a building or construct or carry out works
Clause 43.02-2	Construct a building or construct or carry out works

6 Conditions on the permit are amended to read as set out in Appendix A

Hearing vacated

7 The hearing scheduled at 10:00am on **20, 21, 22 and 23 May 2025** is **vacated**. No attendance is required.

S. R. CIMINO
Senior Member

APPEARANCES

For Derrimut 247 Gym (Vic) Pty Ltd	Alex Gelber, of counsel, instructed by Amar Singh, lawyer, Norton Rose Fulbright, with Michelle Nassour, legal counsel
For Monash City Council	Rory O'Connor, lawyer, Hall & Wilcox, with Alexandra Wade, team leader – statutory planning
For Inspire Apparel Pty Ltd	Annette Davis, retail manager
For Sunridge Australia Pty Ltd	Sally Deayton, operations manager



REMARKS

- 1 This matter involves an application pursuant to section 77 of the *Planning and Environment Act 1987* (Vic) to review the responsible authority's decision to refuse to amend a permit that allows the use of the subject land as a gymnasium with associated reduction in parking.
- 2 At the compulsory conference, the parties reached agreement and request orders by consent. The parties request that the permit be amended to continue to allow the use of the building on land at 1686 Dandenong Road for gymnasium (restricted recreation facility) with the provision of parking on the subject land and neighbouring land. More specifically, a proposed car park at 1887-1889 Dandenong Road, on the opposite side of the highway, no longer forms part of the proposal.
- 3 The central dispute in this case relates to car parking provision. The car parking reduction is based on reduced patron numbers, the actual parking provided on the subject land and neighbouring White Street car park and, to the extent necessary, the availability of on street parking. The conclusion that a modified proposal is appropriate is formed with the benefit of a joint report by traffic experts engaged by the responsible authority and the applicant and the constraints set out in the agreed permit conditions.
- 4 Therefore, this order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
- 5 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 issue of a permit in the form agreed by the parties as described in the agreed orders is appropriate having regard to the matters it is required to consider under section 60 of the *Planning and Environment Act 1987* (Vic) including the balanced application of the strategies and policies of the relevant 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 proposal which would materially affect any person other than the parties to the proceeding.
- 6 Based on the information available to the Tribunal, I am satisfied that, the agreed position is within the broad range of acceptable outcomes, and it is therefore 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* (Vic).

S. R. CIMINO
Senior Member



APPENDIX A – PERMIT DESCRIPTION AND CONDITIONS

PERMIT NO	TPA/54185/A
PLANNING SCHEME	Monash Planning Scheme
RESPONSIBLE AUTHORITY	Monash City Council
ADDRESS OF THE LAND	1686 Dandenong Road; OAKLEIGH EAST VIC 3166

THE PERMIT ALLOWS:

Planning scheme clause	Matter for which the permit has been granted
Clause 33.01-1	Use of the land for a Restricted Recreation Facility (Section 2 Use)
Clause 33.01-4	Construct a building or construct or carry out works
Clause 43.02-2	Construct a building or construct or carry out works

CONDITIONS TO APPLY TO THE PERMIT:

Amended Plans Required

- 1 Within three (3) months of the amended (Amendment A) permit being issued, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the plans submitted to Council prepared by Traverse Transport Pty Ltd, dated 22 October 2024 and Site Plan prepared by Derrimut 247 Gym (VIC) Pty Ltd, dated 22 October 2024 but modified to show:
 - (a) Internal layout of the gymnasium showing the location of fitness rooms, access points, food and drink services, bathroom facilities, staff offices and facilities etc.
 - (b) Deletion of the two tandem car spaces located on the western side of the subject site building, to the south of the existing waste storage and collection area, and replacement with 9 bicycle spaces (3 allocated to staff and 6 allocated to visitors).



- (c) Relocation of waste storage (including associated screening) and collection area to allow for fire hydrant not to be obscured and clearly visible from White Street.
- (d) Deletion of bicycle spaces and installation of new bicycle spaces in accordance with the recommendations of Mr Brett Young at Appendix C of his evidence statement dated 17 April 2025 in Proceeding No. P1436/2024.
- (e) Deletion of proposed car parking at No.1887-1889 Dandenong Road, Oakleigh East.
- (f) Clear identification of car parking spaces on the title associated with the subject land or common property in accordance with the diagrams for each relevant time period prepared by Traverse Transport Pty Ltd dated 22 October 2024 and included at Appendix A of Mr Brett Young's evidence statement dated 17 April 2025 in Proceeding No. P1436/2024.
- (g) Dimensions of all car parking spaces in accordance with the design requirements of Clause 52.06-9 of the Monash Planning Scheme.
- (h) Clear directional signage on the subject land and in common property areas (including the White Street car park), including identification of location of signage, in accordance with the Direction Signage Plan dated 15 October 2024, modified such that signs must clearly show time periods when gym car parking is allowed and not allowed in spaces that are otherwise allocated to other businesses.
- (i) Litter bins to be located within common property land within the White Street car park.
- (j) Any changes associated with the Waste Management Plan submitted in accordance with condition 10 of this Permit.
- (k) A Traffic & Patron Management Plan in accordance with condition 11 of this Permit.
- (l) A Litter Management Plan in accordance with condition 14 of this Permit.

all to the satisfaction of the Responsible Authority.

No Alterations

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

Hours of Operation

- 3 The use allowed by this permit may operate 24 hours a day, 7 days a week.



Staff Numbers

- 4 No more than ten (10) staff may be present on the subject land at any one time, except with the written consent of the Responsible Authority.

Patron Numbers and car parking arrangements

- 5 Until and unless planning permit no. TPA/42568 (which allows the use of the land at 1692 Dandenong Road, Oakleigh East for the purpose of a childcare centre) is amended so that it does not rely on:
- (a) more than 9 car parking spaces in the White Street car park between 7am and 7pm on weekdays; and
 - (b) any car parking spaces in the White Street car park after 7pm on weekdays; and
 - (c) any of the 15 car parking spaces at the south of the childcare centre (9 spaces on the childcare centre lot and 6 in common property) after 7pm, the patron limits detailed in condition 6 relating to weekdays from 7:00am – 5:59pm and 6:00pm - 6:59pm are reduced by 50 patrons, except with the written consent of the Responsible Authority.
- 6 Except as provided by condition 5, unless with the prior written consent of the Responsible Authority, no more than the following number of patrons are permitted on the land at any one time:

Day	7:00am to 5:59pm	6:00pm – 6:59pm	7:00pm to 6:59am
Weekdays	260	350	400
Weekends and public holidays	370	400	400

- 7 Unless with the written consent of the Responsible Authority, the occupier of the land must advise the Responsible Authority in writing at least every three months, and otherwise upon a written request, as to the availability and tenure of the car parking spaces that are identified in the diagrams for each relevant time period prepared by Traverse Transport Pty Ltd dated 22 October 2024 and included at Appendix A of Mr Brett Young's evidence statement dated 17 April 2025 in Proceeding No. P1436/2024 (as modified by condition 1).
- 8 If the car spaces identified in Column A below become unavailable at any time (whether by expiration of agreement, lease, owners corporation arrangement or otherwise), the number of patrons allowed on the land during any time period set out in Condition 6 is reduced by the number in Column B, unless with the written consent of the Responsible Authority:

Column A	Column B
Car spaces as shown on diagrams for each relevant time period prepared by Traverse	Automatic reduction of



Transport Pty Ltd dated 22 October 2024 and included at Appendix A of Mr Brett Young's evidence statement dated 17 April 2025 (as modified by condition 1)	allowable patrons if car spaces become unavailable
61 spaces within the White Street car park (green)	93
9 spaces at rear of childcare centre and within childcare centre title boundary (burgundy)	13
24 spaces within common property generally allocated to AWN, Stauff and Pump Engineers (pink)	36
6 spaces within common property generally allocated to the childcare centre (light blue)	9

Amenity of Area

- 9 The amenity of the area must not be detrimentally affected by the use through the emission of noise, artificial light or vibrations or development, through the:
- (a) transport of materials, goods or commodities to or from the land;
 - (b) appearance of any buildings, works or materials;
 - (c) emission of noise, artificial light, vibration, smell or waste products;
 - (d) overspill of car parking onto the street network,
- to the satisfaction of the Responsible Authority.

Waste Management Plan

- 10 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. The plan must be generally in accordance with the Waste Management Plan prepared by Traverse Transport Pty Ltd, dated 22 October 2024, except that the plan must be modified to show:
- (a) Inclusion of food and drink services from the supplement and nutrition shop as part of calculating bin capacity requirements.
 - (b) Inclusion of the availability and management of sharps containers.
 - (c) Detail of how litter bins within common property will be managed.
- The provisions, recommendation and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Traffic & Patron Management Plan

- 11 Concurrent with the endorsed plans required pursuant to Condition 1, a Traffic and Patron Management Plan must be submitted to and approved by

the Responsible Authority. The plan must be in accordance with the Traffic & Patron Management Plan prepared by Traverse Transport Pty Ltd, dated 22 October 2024, except that the plan must be modified to show:

- (a) Car parking detailed in accordance with the car parking spaces identified within the plans submitted under Condition 1;
 - (b) The management of patrons lining up to access the gym, including associated amenity impacts for neighbouring residents and businesses including potential crowding, noise impacts and overspill of car parking;
 - (c) The replacement of manual counting methodologies with an automated patron counting system within 12 months of the amended date of this permit, and a requirement to update the Traffic & Patron Management Plan at the point at which the automatic patron counting system is installed,
- to the satisfaction of the Responsible Authority.

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

Signage Regarding Patron Noise

- 13 The applicant must, to the satisfaction of the Responsible Authority, display a sign at the entrance and exit of the gym advising patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.

Litter Management Plan

- 14 Concurrent with the endorsed plans required pursuant to Condition 1, a Litter Management Plan must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and approved under this condition. The plan must include:
- (a) Regular collection of litter generated on the land and by patrons of the gym within 200m of the land;
 - (b) A minimum once daily patrol before 10:00am by a staff member of the gym to collect litter within 200m of the land;
 - (c) The location of all rubbish bins within 200m of the land; and
 - (d) Signage within the land and car park areas encouraging patrons to not litter public areas and roadside reserves.

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

Satisfaction Continuation and Completion

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

Permit Expiry

- 16 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 use or the development has not yet started; or
- (ii) within twelve (12) months of the permit expiry date where the development has lawfully started before the permit expires.

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

– End of conditions