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| VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  planning and environment division | |
| planning and environment LIST | vcat reference No. P1993/2019  planning Permit amendment no. TPA/46812/C |
| CATCHWORDS | |
| Section 77 *Planning and Environment Act 1987*; Monash Planning Scheme; Industrial 1 Zone; Amendment to permit; Warehouse; showroom; office uses; Car parking reduction; Access to a road in a Road Zone Category 1. | |

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| APPLICANT | Moniton Pty Ltd |
| responsible authority | Monash City Council |
| Referral Authority/ Respondent | Department of Transport (Head, Transport for Victoria (formerly VicRoads)) |
| SUBJECT LAND | 1535 Centre Road, Clayton |
| WHERE HELD | Melbourne |
| BEFORE | Bill Sibonis, Senior Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 19 June, 2020 |
| date of interim order | 2 July, 2020 |
| DATE OF ORDER | 20 August, 2020 |
| CITATION | Moniton Pty Ltd v Monash CC [2020] VCAT 864 |

# Order

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by changing the name of the permit applicant to:

Moniton Pty Ltd

1. Pursuant to clause 127 of the *Victorian Civil and Administrative Tribunal Act 1998*, the application is amended by changing the name of the applicant to:

Moniton Pty Ltd

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

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| * Prepared by: | David Earle, Architects and Project Co-ordinators Pty Ltd |
| * Drawing numbers: | TP-02, Revision K |
| * Dated: | 23.01.20 |

1. In application P1993/2019 the decision of the responsible authority is affirmed.
2. Planning permit TPA/46812A must not be amended.

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| Bill Sibonis  **Senior Member** |  |  |

# Information

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| Description of proposal | An amendment to the endorsed plans to reduce the number of car parking spaces, alter the car parking layout, alter vehicle access to Centre Road, and modify the landscaping. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant an amendment to a permit. |
| Planning scheme | Monash Planning Scheme (**Planning Scheme**) |
| Zone and overlays | Industrial 1 Zone (**INZ1**)  Design and Development Overlay – Schedule 1, Industrial and Commercial Design and Development Area (**DDO1**)  Abuttal to a road in an Road Zone Category 1 (**RDZ1**) |
| Permit requirements | Cl. 52.06 (reduction of the car parking requirement)  Cl 52.29 (alteration of access to a road in a RDZ1) |
| Key scheme policies and provisions | Cl. 18, 21, 22.03, 52.06, 52.29 and 65 |
| Land description | The review site is located on the north-west corner of Centre Road and McNaughton Road in Clayton. It is a regular landholding with a 171.28 metre frontage, a depth of 143.26 metres and an overall site area of 2.7 hectares. Occupying the land is a warehouse, a showroom, gymnasium, office and an open-air storage area. The structures on the land comprise a large single-level warehouse, a two-storey building accommodating the gymnasium and office, and a single-storey building accommodating the showroom. At-grade car parking is located adjacent to the frontage and the western boundary. Surrounding land is developed and used for industrial/warehouse purposes. The site forms part of an expansive industrial precinct. |

# Reasons[[1]](#footnote-1)

## What is this proceeding about?

1. This is an application to the Tribunal for a review of the decision of the Monash City Council (**Council**) to refuse to grant an amendment to a planning permit. The proposed amendment comprises a reduction of the car parking spaces on the land from 264 to 144, modification to the car parking layout, alteration of access to Centre Road and a change to the landscaping.
2. The Department of Transport (Head, Transport for Victoria)[[2]](#footnote-2) objected to the amendment on grounds that the proposal compromises the efficiency of Centre Road and public safety. Its concerns are confined to the retention of the eastern-most vehicle crossover to Centre Road.
3. The Council refused the amendment on the following grounds:

* Determining referral authority VicRoads objected to the proposal.
* The excessive reduction in car parking is not justified or supported.

1. The Tribunal must decide whether the amendment to the permit should be approved. Having considered the submissions and evidence, with regard to the relevant policies and provisions of the Planning Scheme, assisted by my inspection, I have determined to affirm the Council’s decision. My reasons follow.
2. With the agreement of the parties, this hearing is conducted entirely on the basis of documents, without any physical appearance by the parties or their representatives, pursuant to section 100(2) of the *Victorian Civil and Administrative Tribunal Act 1998*.

## what is the relevant planning permit history?

1. The Council’s submission set out the planning history of the review site and identified two permits, TPA/32816 and TPA/46812 to be of relevance in the consideration of car parking.
2. Permit TPA/32816 was issued on 21 July 2005 and authorised part use of the premises for an indoor recreation facility (health and fitness centre). Condition No. 5 of the permit specifies that at least 45 spaces must be provided, including two spaces for the disabled. This permit was amended on 20 November 2015 to authorise the operation of the fitness centre 24 hours a day, 7 days a week.
3. Permit No. TPA/46812 was issued on 28 July 2017 and authorised “dividing the existing warehouse building into eight smaller warehouses, construction of five warehouses with associated car parking, and a showroom and office all exceeding 7 metres in height and alteration (removal) of access to a road in a Road Zone, Category 1”. The related officer’s report notes that 249 car spaces were provided, which was a shortfall of 41 spaces from the requirement of clause 52.06-5. An empirical assessment supported the provision of 251 spaces, with a consequence being a shortfall of 2 car spaces. According to the officer’s report, the Council accepted this shortfall could be “accommodated by the fact that the gym operates outside regular business hours”.
4. The permit was amended on 15 August 2018,[[3]](#footnote-3) with one of the amendments being the provision of an additional 15 car spaces. As a consequence, the number of car spaces on the land increased to 264.
5. An extension of time to the permit was granted in October 2019. The development must now be started by 28 July, 2021 and be completed by 28 July, 2023.

## What is the Department of Transport’s concern?

1. The Department of Transport has raised no issue in respect of the proposed car parking reduction or the modified car parking layout. Rather, its concern relates to the continued use of the eastern crossover to Centre Road. In the Department’s submission:
   * the amendments to the access design retain an access (eastern crossover) at an undesirable location and would have an impact on the operational efficiency of Centre Road
   * the eastern crossover is situated approximately 11 metres from the intersection of Centre Road and McNaughton Road. The intersection is controlled by traffic signals for all straight-through and right-turn movements, and includes the left-turn and through movement from Centre Road into McNaughton Road
   * there have been 3 crashes in the intersection within the last five-year period:
     + on 4 April 2018, a collision occurred between a vehicle turning right and a vehicle travelling straight through
     + on 21 September 2018, a collision occurred between a vehicle turning right out of McNaughton Road into Centre Road and a pedestrian crossing at the east
     + on 12 December 2018 a collision with two vehicles across traffic occurred
   * the crossover operates as an entry and exit adjacent to double lines within this portion of Centre Road, indicating that it operates as a left-in/left-out access point
   * the site is served by four access points – three to Centre Road and one to McNaughton Road. The current and proposed layout enables unrestricted and unobstructed access to all four access points.
2. The Department’s specific concern is detailed in the following extract of its submission:

26. The existing eastern crossover is situated approximately 11 metres from the intersection of Centre Road and McNaughton Road. This is an undesirable location as it is within close proximity to a signalised intersection, with vehicles indicating to turn into that access likely to cause confusion to motorists behind them about whether they are turning left into the access or into McNaughton Road. This will result in a vehicle stopping or slowing down abruptly should a motorist misjudge what the safe and appropriate braking distance is to the vehicle in front of them and in turn, create a potential crash risk.

## what is the evidence?

1. The Council provided an expert witness statement prepared by Mr J Wicks, Traffic Engineer of SALT (**SALT**). In his assessment, the uses approved under the permit attract a statutory car parking requirement of 263 spaces, comprising 203 spaces for the warehouses (166 for the existing warehouse and 37 for the five proposed warehouses), six for the showroom, nine for the office and 45 for the gymnasium.[[4]](#footnote-4) The proposed provision of 144 spaces represents a shortfall of 119 spaces when assessed against this requirement.
2. Car park occupancy surveys undertaken on a Thursday between 7.30am and 6.00pm at the site identified a peak demand of 57 spaces for the warehouse use (occurring at 10.00am) and 43 spaces for the gymnasium (occurring at 6.00pm).
3. The evidence includes a car parking demand assessment of existing medium/large warehouses in various locations, which was derived from aerial photography. Mr Wicks adopted a car parking rate of 0.9 space per 100 square metres of gross floor area[[5]](#footnote-5) for these warehouses. He applied this rate to a net floor area of 10,993 square metres for the existing warehouse to derive a parking demand for 100 spaces.
4. For the smaller warehouses, data collected by another Traffic Engineering firm was relied upon and resulted in Mr Wicks adopting a rate of 1.17 spaces per 100 square metres for the warehouses and showroom approved under the permit, equating to 25 car spaces. For the office use, Mr Wicks utilised the rate of 3.5 spaces per 100 square metres specified at clause 52.06-5, resulting in a demand for 9 spaces. On the basis of his analysis, Mr Wicks’ evidence is that the total parking demand for the site, including the 45 spaces for the gymnasium, is 179 spaces, with the proposed 144 spaces representing a shortfall of 35 spaces. The evidence contains an alternative car parking layout showing the provision of 180 spaces.
5. In respect of the concerns expressed by the Department of Transport regarding the eastern vehicle crossover, Mr Wicks noted the applicant’s proposal to restrict its use to left-in/left out only. His evidence states:

I find the location of this crossover undesirable from a safety perspective and that it should either be removed or reconstructed in a manner that physically encourages left-in only movements (ie a triangular splitter island) rather than reliance on ‘no right turn’ signage alone which may be ignored by some drivers.

1. The applicant relies on the evidence of Mr J Maina, Traffic Engineer of Impact Traffic Engineering Pty Ltd (**Impact**). In undertaking a car parking demand assessment, Mr Maina commissioned surveys of three existing warehouses in various locations. From the data derived, Mr Maina identified a peak parking demand at a rate of between 0.75 – 1.12 spaces per 100 square metres.
2. To determine the car parking demand associated with the existing uses on the land (being the warehouse and gymnasium), Mr Maina has pneumatic tube counters placed at all four access points for a seven-day period. The data collected showed that up to 75 vehicles were present on the site at any one time.
3. In recognition that this comprised a combination of commercial and commuter vehicles, a ‘commercial vehicle discount’ was applied to deduce the peak parking demand. This was done by referring to data collected at the access point to McNaugton Road, which services predominantly commercial vehicles, that revealed an average of 14% of traffic movements to/from the site use this access. This was also applied to one of the Centre Road access points which caters for a mix of commercial and commuter vehicles. The discount is 28%, but Mr Maina adopted a 25% discount, which is slightly more conservative. Applying this to the car parking demand of 75 vehicles, the analysis arrived at a commuter parking demand of 57 car spaces, and 18 commercial vehicles. The conclusion derived from this analysis is that, with 207 spaces currently provided on the land, there is a surplus of 150 spaces.
4. Mr Maina’s assessment is that the proposed warehouses will have a car parking demand of 14 – 22 spaces, based on the rate of 0.75 – 1.12 spaces obtained from the case studies and applied to the 1861 square metres of floor area.
5. For the proposed office and showroom, Mr Maina adopted the rates in clause 52.06-5 of 3.5 spaces and 3.0 spaces per 100 square metres, respectively. This results in a requirement of nine spaces for the office and eight spaces for the showroom.
6. When added to the maximum 22 spaces for the proposed warehouses, Mr Maina’s evidence is that the approved uses will generate a demand for 39 spaces. In combination with the 75 spaces currently utilised, Mr Maina’s projection is a total demand for 114 spaces. His conclusion is that the proposed 144 spaces will comfortably support the existing car parking demand of both the existing and proposed uses.
7. Mr Maina’s evidence also addressed the eastern vehicle crossover to Centre Road. According to the evidence, the crossover operates as a left in/left out access point, and is utilised by approximately 9% of the total traffic from the site. Having regard to the location of the new uses, being at the western end of the property, Mr Maina does not anticipate that motorists with destinations/origins at the proposed warehouses and showroom/office will rely on the eastern access point.
8. Both experts respond to each other’s evidence statements. A summary of the responses follows:

Mr Wicks’ comments on Mr Maina’s evidence:

* + the discount applied to the commercial vehicles relies on an assumption that all traffic utilising McNaughton Road is commercial in nature, which is not the case. It also assumes that a similar commercial percentage will use the westernmost access to Centre Road, but this is not the case based on on-site observation. In addition, account is not taken of any time of day variations between commuter and commercial parking demands
  + a traditional car parking survey, rather than reliance on pneumatic tube counts, may have yield a higher parking demand, as was recorded in the surveys commissioned by SALT
  + the calculation of the car parking requirement is based only on the new floor area. However, clause 52.06-5 states:

Where an existing use is increased by the measure specified in Column C of Table 1 for that use, the car parking requirement only applies to the increase provided the existing number of car parking spaces currently provided on the land in connection with the existing use is not reduced.

As the existing use is increasing in size and the parking supply is being reduced, the parking requirement is to be determined on the total floor area, both existing and proposed

* + the rate of 3.0 spaces per 100 square metres for the showroom is based on ‘Restricted Retail’. However, showroom falls under ‘Commercial Display Area’ which is nested under ‘Warehouse’ and has the same parking requirement of 2 spaces plus 1.5 spaces per 100 square metres of floor area
  + the assessment of the car parking is based entirely on the demand generated at this point in time and does not give regard to the future parking demands of the existing warehouse or the requirement for 45 spaces for the gymnasium, which is not operating near its capacity of 250 persons at the moment

Mr Maina’s comments on Mr Wick’s evidence:

* + the estimate of 35 car spaces for the new uses aligns with Mr Maina’s estimate of 39 spaces. The difference arises from the different rates adopted for the showroom. The higher rate is appropriate as a showroom attracts a greater number of visitors than a warehouse
  + while accepting peak demand estimates of 57 spaces for the warehouse and 43 for the gymnasium, his assessment does not take into account the fact that the peak demand for each use did not coincide (the warehouse use peaked mid-morning, while the gymnasium use peaked after hours). During typical business hours, a peak of 21 spaces for gymnasium was recorded
  + the existing warehouse net floor area is calculated as 10,993 square metres. The application plans show 9417 square metres and the endorsed plans show 9635 square metres. The appropriate net floor area for the assessment should be 9635 square metres as shown on the endorsed plans, and would generate a parking demand for 0.59 space per 100 square metres
  + of the case studies, two are relevant as they are large scale warehouses, located proximate to the site and are of a comparable scale and use. The higher rate of 0.75 per 100 square metres identified in these case studies should be utilised. The adopted rate of 0.9 space per 100 square metres has not been substantiated
  + allowing for the variation in demand over the course of the day, the gymnasium and the new uses would generate a demand for 55 – 60 spaces, leaving 84 – 89 spaces for use by the existing warehouse during typical business hours (which equates to 0.87 – 0.92 space per 100 square metres, and is higher than the comparable case studies.

1. The Department of Transport reviewed the evidence of both experts, and its position in respect of this evidence may be summarised as follows:
   * the views of the experts about the safety issues at the eastern crossover only being associated with right-hand turn movements are not relevant to the concerns held by the Department, and will not address the Department’s concerns. This restriction is no different to what occurs at present and would not mitigate the safety and operational risks identified
   * given the traffic survey findings in Mr Maina’s evidence that only 9% of the site generated traffic is utilising the eastern crossover, the criticality of retaining the crossover is questioned
   * unfamiliar visitors may miss the western crossover or may choose the southern car park as their choice for parking and look for other options to enter the site
   * Mr Wicks’ evidence that the eastern crossover is in an undesirable location from a safety perspective and its removal would be appropriate reinforces the Department’s submission that the crossover is by nature not a safe access outcome
2. The Department submitted that, having regard to the objectives and strategies of clause 18.01-2S and the mandate under the *Transport Integration Act 2010*, there is reasonable nexus to review the proposal in a holistic context and rationalise access arrangements to include removal or modification of the eastern crossover. It went on to submit that there are no ‘concrete facts or observations to substantiate that the eastern crossover is a critical part of the site’s access strategy’ and that with only 9% of the generated traffic utilising this access, there is little to no benefit in retaining this access point.
3. As part of its conclusion, the Department submitted that there is a reasonable nexus for targeted safety improvements to be considered at the eastern crossover as the site is in one ownership with a relatively permeable car park throughout the site. It further submitted that the removal of the crossover will enhance the service and safety of Centre Road by reducing crash risk, but will not result in detriment to the businesses operating on the land.

## should the car parking provision be reduced?

1. The Council opposes the proposed car parking reduction. It referred to clause 21.08 of the Municipal Strategic Statement (**MSS**), which addresses Transport and Traffic, with an identified key issue being that car parking should be provided on site to satisfy the needs of users without detriment to local amenity. The Council did not refer to any objective or strategy of relevance in this matter. Reference was, however, made to a purpose of clause 52.06, being to ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.
2. In support of its position opposing the amendment, the Council submitted that there is a lack of suitable overflow parking opportunities in adjoining streets. It submitted that Mr Wicks’ evidence which recommends 179 spaces represents a balanced approach that provides an opportunity to further develop the site while providing an appropriate number of car spaces and allowing for the removal of the eastern crossover as sought by the Department of Transport.
3. In the applicant’s submission, on the basis of Mr Maina’s evidence, the car parking reduction sought is justified. The submission is critical of the Council’s position of opposing approval of the amendment, when the evidence of its expert is supportive, subject to the provision of 179 car spaces. The applicant maintains that the proposed reduction from 264 to 144 car spaces is acceptable and will meet the car parking demands of the proposal.
4. The assessment of whether the car parking reduction should be approved has not been enabled or assisted by the evidence, as the evidence of both experts contains limitations or deficiencies, including:
   * a lack of clarity regarding the net floor area of the existing warehouse on the land. This is a fundamental issue and would be able to be addressed by a properly drawn set of plans which detail the existing conditions. The net floor area can be calculated utilising the definition in the Planning Scheme, and with the components not to be included in the calculation (such as loading bays) being clearly shown on the plans
   * the reliance on pneumatic tube counts by Impact, and the consequent application of a discount for commercial vehicles, being an approximation derived from the use of one access point (McNaughton Road) and then also applying it to a second access point (in Centre Road), in assessing the existing car parking demand. This raises uncertainty in respect of the discount, noting that the on-site observations of SALT were that minimal commercial vehicles utilised the Centre Road access point. In the circumstances of this application, this means of determining existing car parking demand is not an acceptable substitute of on-site surveys
   * the use of aerial photography to assess car parking demand by SALT is for a one point in time rather than over the period of a day, for example. This method utilises gross floor area in the calculation of car parking demand, which is not consistent with the net floor area calculation specified in clause 52.06-5 for a warehouse use
   * the assessment of the data derived from the car parking surveys commissioned by Impact refers to approximate floor areas, does not address net floor area and, in one instance, relates to a multiple-occupancy premises with a number of different uses without distinguishing the car parking demands of each.
5. These are significant as they relate to information that is integral to determining the relevant car parking rates that should be properly applied in deciding whether the proposed reduction in the on-site car parking provision will represent an acceptable planning outcome. They apply to both the existing and proposed car parking demand. While the limitations or deficiencies are contained in both sets of evidence, ultimately it falls on the applicant to make its case, given it has brought this application. It has not done so. Based on the information available, I am unable to conclude that the proposed car parking reduction is justified.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is affirmed. Planning Permit No. TPA/46812A is not amended. Given this conclusion, I do not need to make any findings in respect of the retention or otherwise of the eastern vehicle crossover to Centre Road.

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| Bill Sibonis  **Senior Member** |  |  |

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 of this material will be cited or referred to in these reasons. [↑](#footnote-ref-1)
2. A determining referral authority (formerly VicRoads). [↑](#footnote-ref-2)
3. The amended permit is identified as Permit No. TPA/46812/A [↑](#footnote-ref-3)
4. There is no requirement specified in clause 52.06-5 for the gymnasium, with the 45 spaces representing the number required to be provided by Permit TPA/32816. [↑](#footnote-ref-4)
5. The relevant rate specified in clause 52.06-5 is 2 car spaces plus 1.5 car spaces per 100 square metres of net floor area. Mr Wicks’ evidence states that he utilised gross floor area “allowing for possible change of tenant or increased growth for the existing tenant”. [↑](#footnote-ref-5)