

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1391/2023
PERMIT APPLICATION NO. TPA/55128

APPLICANT	Hercules Kraloglou & SMESA Pty Ltd v Monash City Council & Iroamd3 Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	80 Poath Road HUGHESDALE VIC 3166
HEARING TYPE	Compulsory conference
DATE OF HEARING	23 April 2024
DATE OF ORDER	23 April 2024

ORDER

- 1 In application no. P1391/2023 the decision of the responsible authority is varied.
- 2 In permit application no. TPA/55128 a permit is granted and directed to be issued for the land at 80 Poath Road, Hughesdale Vic 3166 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

Monash Planning Scheme Clause Nos.	What the permit allows
34.01-4	To construct a building or carry out works in the Commercial 1 Zone. <i>(construction of a four storey building comprising a commercial premises, a caretakers dwelling and three residential apartments).</i>
52.06-3	To reduce the number of car parking spaces required under Clause 52.06-5. <i>(Reduction of the car parking requirement for the commercial premises).</i>

- 3 The hearing scheduled 13 & 14 June 2024 is vacated. No attendance is required.

Frank Dawson
Member



APPEARANCES

For applicant	Theo Zervas, of Zedcubed Pty Ltd Hercules Kraloglou in person
For responsible authority	Jeanny Lui, town planner Sally Moser, town planner
For respondent	Bruno Ambrosino, town planner of CS Planning Consultants Pty Ltd

REMARKS

- 1 This matter involves an application pursuant to section 82 of the *Planning and Environment Act 1987 (Vic)* for a review of Monash City Council's decision to issue a notice of decision to grant a permit, dated 10 October 2023, for the construction of a four storey building comprising a commercial premises, a caretakers dwelling, and three (3) residential apartments and reduction of the car parking requirement for the commercial premises at 80 Poath Road, Hughesdale.
- 2 At the compulsory conference, the parties reached agreement and request orders by consent. The parties request that a permit is granted, subject to conditions.
- 3 This order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
- 4 The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
 - the responsible authority is of the opinion that the permit is appropriate having regard to the matters it is required to consider under section 60 of the *Planning and Environment Act 1987 (Act)*, including the balanced application of the strategies and policies of the Monash Planning Scheme (**Planning Scheme**) and is otherwise in conformity with the provisions of the Planning Scheme and the Act;
 - the proposed orders will not result in any change to the proposed development which would materially affect any person other than the parties to the proceeding.
- 5 Based on the information available to the Tribunal, I consider it is appropriate to give effect to the settlement reached by the parties pursuant to section 93(1) of the *Victorian Civil and Administrative Tribunal Act 1998*.

Frank Dawson
Member



APPENDIX A

Permit Application No.	TPA/55128
Land	80 Poath Road HUGHESDALE VIC. 3166

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CONDITIONS

Amended Plans

- 1 Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the plans prepared by Iroamd2 Building Consultants, Revision B dated 16 August 2023, but modified to show:
 - (a) Provision of a separate lift to the top level dining area, for exclusive use of the commercial/ restaurant use, and separate from the residential lift.
 - (b) The changes on the plans and elevations identified as Revision C ‘VCAT Objection’ dated 16 April 2024:
 - i On Levels 1, 2 & 3 a lightwell 3.265 metres in length with a depth of 1.1 metres extending west of stairwell (south of the lifts).
 - ii On Levels 1, 2 & 3, the lightwell east of the stairwell extended to a length of 3.455 metres to the east with a depth of 1.15 metres.
 - iii On the southern elevation of Level 2, the clear glass balustrade to the Road balcony changed to solid material.



- iv On the southern elevation of levels 1 and 2, the balcony balustrade changed to solid material and the height shown above finished floor level.
- v On Level 4:
 - A notation identifying the provision of a glass acoustic wall to 1.7 metres in height on the west side of the Roof Top space.
 - A notation identifying the provision of a solid acoustic attenuating wall to 2.8 metres with a height of 1.7 metre for the first 1.045 metres back from the western edge of the floor.
 - The provision of a double-glazed sliding door for acoustics provided to the west siding of the 'Dining 2' area on level 3.
 - The provision of acoustic absorbing internal wall finish, sound screen wall and ceiling insulation. The proposed acoustic measures must be supported with written advice from a qualified acoustic engineer or other person with relevant qualifications.
- (c) Internal reconfigurations as a result of conditions 1a and 1b.
- (d) Labelling on the plans indicating the restaurant on the ground floor and dining area on the top level are under the same operator.
- (e) Details of screening proposed to the east facing balconies to prevent overlooking to the habitable room windows of the east adjoining property and satisfy the objectives of Standard B22 Overlooking.
- (f) Sill height of all windows on elevations.
- (g) A minimum of 4 bicycle parking spaces must be provided on site, including 1 bicycle space to be provided on the ground level (not overhead storage) in accordance with the requirements of AS2890.3-2015.
- (h) Details of the car lift mechanical parking system and car lift design.
- (i) A Sustainable Design Assessment in accordance with Condition 4.
- (j) Any changes recommended in the Waste Management Plan required under condition 5.

All to the satisfaction of the Responsible Authority.

Layout not to be Altered

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



Caretaker's Residence

- 3 The caretaker's residence must only be occupied by staff or supervisor of the restaurant on the ground and third level to the satisfaction of the Responsible Authority.

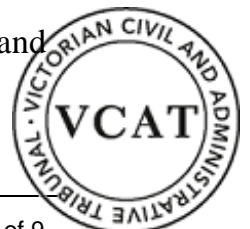
Sustainable Design Assessment (SDA)

- 4 Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainable Design Assessment in accordance with Clause 22.13 of the Monash Planning Scheme must be submitted to and approved by the Responsible Authority. Upon approval the Sustainable Design Assessment will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the Sustainable Design Assessment to the satisfaction of the Responsible Authority.

Waste Management Plan

- 5 Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan (WMP) must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the Waste Management Plan prepared by Ratio Consultants Revision R01F01 dated 15 May 2023 but modified to show the updated building layout in accordance with the amended development plans dated 23 March 2023 and changes under condition 1 of this permit, to the satisfaction of the Responsible Authority. The amended Waste Management Plan should also show the following changes:

- The addition of TPA number, streets accessed directly and existing land use to the introductory section.
- Amended waste volume calculation to correctly calculate the waste volume for residential apartments and garbage generate for restaurant. The calculation must also include food waste and recycling waste generation.
- Revised frequency of bin collection.
- Provision of scaled plans to show bin storage areas, cleaning/ washing space, drainage to sewer, bin maneuverability and all waste streams. Bins allocated to the residential and commercial should be clearly differentiated.
- Location of glass bin.
- Provision of scaled plans to show site access arrangements including outlining the location of, and access to, bin storage areas for contractors, access routes to bin storage areas for occupants, gradients, access to bin collection locations, hard waste and e-waste bin.
- Strategies for the initial occupation period of the residential apartments when there are surplus of waste from large packaging, and the body corporate must manage extra collection of waste with the



private contractor for this period to prevent dumping and contamination of recycling bins with soft plastic and polystyrene.

- Hard waste collections conducted on site, presentation of hard waste on the site frontage is prohibited.
- E-waste disposal and information of local options for responsible disposal of clothing and textiles.
- Details of how the waste management system will be monitored.
- A waste management communications strategy for occupiers.

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

Construction Management Plan

6 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 and water and sediment laden runoff;
- (b) Appropriate measures for the prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
- (c) Appropriate measures relating to removal of hazardous or dangerous material from the site, where applicable;
- (d) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site so as to prevent material leaving the site and being deposited on Council's road network;
- (e) A program for the cleaning and maintaining surrounding road surfaces;
- (f) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves;
- (g) Measures to provide for public safety and site security;
- (h) A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;



- (i) A Traffic Management Plan showing truck routes to and from the site;
- (j) A swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
- (k) Appropriate measures to ensure that sub-contractors/tradespersons operating on the site are aware of and adhere to the requirements of the CMP;
- (l) The provision of contact details of key construction site staff; and
- (m) Include a requirement that except with the prior written consent of the Responsible Authority, a requirement that demolition, excavation or construction works must only be carried out during the following hours:
 - Monday to Friday (inclusive) – 7.00am to 6.00pm;
 - Saturday – 9.00am to 1.00pm;
 - Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines)

No works are permitted on Sundays or Public Holidays except with the prior written consent of the Responsible Authority.

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.

Drainage

- 7 The site must be drained to the satisfaction of the Responsible Authority. Stormwater must be directed to the Point of Connection as detailed in the Legal Point of Discharge report. Stormwater must not be allowed to flow into adjoining properties including the road reserve.

Car Parking and Accessways

- 8 Before the use starts or any part of the building is occupied, 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.
 - (e) Line-marked to indicate each car space and all access lanes.
- all to the satisfaction of the Responsible Authority.

- 9 The car lift mechanical parking system is required to cater for the following:



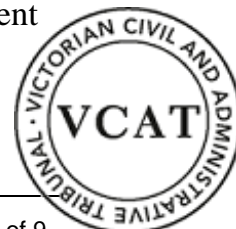
- (a) Independent operation for each parking space.
 - (b) A minimum ground level overhead clearance of 1.8 metres.
 - (c) A car/van up to 175cm height on the upper level.
 - (d) A clear/usable platform width of at least 230cm.
 - (e) Minimum pit length of 520cm.
 - (f) Loading weight per platform of at least 2000kg.
 - (g) A minimum aisle width adjacent to the mechanical parking system of 6.2 metres.
- 10 Parking areas and access lanes must be kept available for these purposes at all times.
- 11 The mechanical parking system to be maintained in a good working order and be permanently available for the parking of vehicles in accordance with its purpose, to the satisfaction of the Responsible Authority.
- 12 All access points to the mechanical parking system require the provision of a gate/door which is to be fully automated and linked to the operating system to ensure that there is no inadvertent access when the system is in motion.
- 13 The access gate to the car lift mechanical parking system is to be fully automated and linked to the car lift operating system to ensure that there is no inadvertent access during the operation of the system.

Privacy Screens

- 14 Prior to the occupancy of the development, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained ongoing to the satisfaction of the Responsible Authority. The use of obscure film fixed to transparent glass or windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.

Services and Plant Equipment

- 15 All pipes (except down-pipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from external view to the satisfaction of the Responsible Authority.
- 16 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.
- 17 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.



Boundary Walls

- 18 The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

Satisfactory Continuation and Completion

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

Time for Starting and Completion

- 20 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 2 years from the date of issue.
 - (b) The development is not completed before 4 years from the date of issue.

In accordance with Section 69 of the *Planning and Environment Act 1987* (Vic), a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

- End of conditions -

