

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P704/2022
PERMIT APPLICATION NO. TPA/51467/A

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| APPLICANT | WCL Development Pty Ltd |
| RESPONSIBLE AUTHORITY | Monash City Council |
| REFERRAL AUTHORITY | Head, Transport for Victoria |
| SUBJECT LAND | 4-6 Stockdale Avenue CLAYTON VIC 3168 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 31 August 2022 |
| DATE OF FINAL ORDER | 26 September 2022 |
| CITATION | WCL Development Pty Ltd v Monash CC [2022] VCAT 1114 |

ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by
 - Including an amendment to the description of what the permit allows to remove reference to ‘rooming house.’

Permit amended

- 2 In application P704/2022 the decision of the responsible authority is set aside.
- 3 Planning permit TPA/51467/A is amended and an amended permit is directed to be issued for the land at 4-6 Stockdale Avenue, Clayton in accordance with the endorsed plans and the conditions set out in Appendix A. The amended permit allows:
 - Construction of a three storey residential building (student accommodation).

Megan Carew
Member



APPEARANCES

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|---------------------------|---|
| For applicant | L Moore, Town planning consultant, Ratio Consultants He called J Sellars, Traffic engineer, Stantec to give evidence |
| For responsible authority | P English, Town planning consultant, Peter English and Associates |

INFORMATION

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|-------------------------|--|
| Description of proposal | To amend Permit TPA/51467/A issued by Monash City Council on 4 November 2020 by: <ul style="list-style-type: none">• Amending the description of what the permit allows to remove reference to ‘rooming house’.• Deleting the mechanical car parking (four car spaces).• Deleting the requirement for a boom gate.• Making consequential changes to the development plans relevant to the permit. |
| 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 |
| Zone and overlays | General Residential Zone- Schedule 6 (GRZ6) |



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 This hearing concerns an application to amend an existing planning permit issued for a student accommodation building.
- 2 The existing permit TPA/51467 was granted on 4 November 2020². No plans have been endorsed and the applicant seeks to amend the proposal to remove the car stackers from the basement (resulting in four less car spaces), remove the need for a boom gate (condition 1d) and to make consequential changes to the building layout.
- 3 The parties in this proceeding agreed that matters such as the suitability of the site for student accommodation, the overall form of the building and amenity impacts upon neighbours and internal amenity for students are effectively unchanged from the existing permit as the built form remains nearly identical. In addition, the Council did not take issue with the removal of the requirement for the boom gate.
- 4 The disputed issues in this case are generally limited to the changes in the location and form of building services and the changes to the car parking arrangements.
- 5 I must decide if a permit should be granted and if so, what conditions should apply. Having considered the policy and provisions of the Monash Planning Scheme and the submissions of the parties, I have determined to set aside the decision of the responsible authority and grant an amended permit subject to conditions. My reasons follow.

IS THE LOCATION OF BUILDING SERVICES ACCEPTABLE?

- 6 The original plans that are referred to within the permit show services cupboards located towards the northern end of the site frontage. The proposed plans relocate the fire booster and water services to the southern end of the site frontage. The plans also show the gas and electricity meters adjacent to the southern building entrance, setback behind the proposed front fence. The key differences are illustrated in the following figures that are extracted from the applicant's submission.
- 7 Council submits that the changes are a poor response to the streetscape and do not accord with policy that seeks open frontages. The officer's report noted that a permit condition may be able to address this.

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.

² Plans have not been endorsed in the permit and development has not commenced. The conditions for permit expiry do not form part of the amendment application.



Figure 1 Approved development



Figure 2: Proposed amendments



- 8 I am satisfied that an acceptable urban design solution for the services can be provided on site because:
- The site frontage is very wide;
 - The front setback exceeds varied Standard B6 in the schedule to the zone;
 - The overall landscape response will ensure that there is a garden interface; and
 - Conditions can require the detailed design of the services to be provided.

IS THE CAR PARKING PROVISION ACCEPTABLE?

- 9 The approved proposal includes 19 car spaces for the 65 rooms (including two accessible spaces) within the basement for the student accommodation. This rate complies with Council’s local policy which specifies a rate of 0.3 spaces per room.
- 10 The planning scheme does not include a specific car parking requirement at Clause 52.06 for student accommodation. The original permit included reference to the use ‘rooming house’ that does have a statutory car parking requirement of one car space per four bedrooms. However, the parties

agreed that the proposed use was not correctly categorised as a rooming house and that the permit should be issued for a residential building to be used for student accommodation, applying the definitions at Clause 73.03 of the Monash Planning Scheme.

- 11 The proposal to remove the car stackers will reduce the car parking provision to 15 spaces which is four spaces less than what Council's policy seeks. The acceptability of the design and layout of the access ramp and basement car parking was not in dispute between the parties.
- 12 I had the benefit of the evidence of Mr Sellars in this matter. He undertook a detailed car parking demand assessment for the use. He considered that the proposal at a rate of 0.24 spaces per room would provide sufficient car parking and that the impact of any overflow car parking would be limited. He noted that on-street car parking in this area is very limited during the day meaning that students and visitors could not park on-street for extended hours. He considered that a car parking management plan would address the operation of the car park.
- 13 He also assessed the layout of the basement and made some recommendations as to the design of the basement ramp and the location of bicycle car parking that were not disputed by Council.
- 14 The Tribunal accepts that due to the proximity of this area to major institutions and employers that on-street parking demands within this precinct are subject to pressure. Council has sought to manage this by using parking restrictions that result in no long-term on-street parking options during the day in the vicinity of the site.
- 15 I find that the reduced car parking supply is acceptable for the following reasons:
 - The on-site car parking supply will be managed by the student accommodation provider and allocated to students and/or visitors as required and this is reflected in the existing permit conditions for an agreement under Section 173 of the *Planning and Environment Act 1987* and management plan.
 - The subject site is very close to the Monash University Clayton campus and although it is outside the Principal Public Transport Network, it is not remote from alternative bus transport.
 - An oversupply of on-site bicycle parking will be provided. The evidence of Mr Sellars was that additional bicycle parking should be located at the building entrances for visitors and I have included this in the permit conditions.
 - The on-street car parking supply within a reasonable distance of the subject site is protected from any potential long term car parking demands through implemented time restrictions.



- The presence of parking restrictions will likely influence the decision of potential occupants who own a car but are not guaranteed an on-site car parking space, to rent a room within the development.
- Current on-street car parking is low in the vicinity of the review site as demonstrated in the evidence report, and it is reasonable for some on-street visitor car parking given the restrictions that apply as the site has a wide frontage.

16 I have included a new requirement within the operations management plan requiring it to address the allocation of car parking in accordance with the evidence of Mr Sellars.

WHAT CONDITIONS ARE APPROPRIATE?

17 In determining the conditions of permit I have had regard to the draft conditions circulated by Council on the 13 September 2022 in response to my interim order, the submissions of the parties and my reasons set out above. I note that the applicant did not object to the circulated conditions.

FURTHER VOLUNTARY CHANGES

18 In the applicant's response to the permit conditions it was noted that:

We have no objection to the draft conditions circulated by Council on 13 September 2022. However, in response to the discussions at the hearing relating to the booster cabinet and other services (location and size) we offer a 'without prejudice' solution per our Point 2 (below). This could be included as a Condition 1 requirement if the parties are in agreement (we do however acknowledge the absence of any draft condition pertaining to reduction / relocation of services and offer this as a voluntary change).

19 Council objected to this further submission by email dated 21 September 2022. Council says that any further changes to the plans should be re-advertised.

20 Council is correct that I did not provide leave to the applicant to make any further submissions. I have assessed the application as proposed in the plans before me. However, I have included a condition requiring the design detail of all services to be provided on the plans to the satisfaction of the responsible authority.

CONCLUSION

21 For the reasons given above, the decision of the responsible authority is set aside. An amended permit is granted subject to conditions.

Megan Carew
Member



APPENDIX A – PERMIT CONDITIONS

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|------------------------------|--|
| PERMIT APPLICATION NO | TPA/51467/A |
| LAND | 4-6 Stockdale Avenue CLAYTON VIC 3168 |

WHAT THE PERMIT ALLOWS

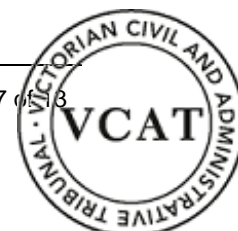
In accordance with the endorsed plans:

- Construction of a three storey residential building (student accommodation)

CONDITIONS

Amended Plans Required

- 1 Before the development starts, amended 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 submitted to Council with the amended application plans prepared by Parallel Workshop Pty Ltd, Revision G stamped 'advertised copy' but modified to show:
 - (a) Plans demonstrating the ramp grades as follows:
 - i 1:10 for the first 5.0m.
 - ii 1:4.49 for 2.0m
 - iii 1:4 for 8.49m
 - iv 1:8 for 2.5m.
 - (b) Relocation of the four basement bicycle spaces to the west of the comms room to provide a 1.5m manoeuvring area behind.
 - (c) The provision of an additional four bicycle spaces at ground level at each of the building entrances for visitors.
 - (d) The location of the basement security door.
 - (e) Design detail of all site services/ service cabinets including location, height, materials, colours and finishes.
 - (f) Finished floor levels of the deck.
 - (g) All habitable room windows with obscured glazing (labelled GL02) to be fixed (non-openable) up to a height of 1.7 metres above finished floor levels to prevent overlooking.



- (h) The following windows to be screened or demonstrate compliance of Standard B22 of Clause 55.01 (*Overlooking objective*):
 - i The first floor level east facing lounge room windows;
 - ii The second floor level south and south-east facing lounge room windows; & the east facing kitchen window of unit 209.
- (i) A notation on the ground floor plan to read ‘Trees No.1, 2, 11 and 13 to be protected in accordance with the recommendation in the arborist report prepared by Melbourne Arborist Reports (Revision 4) dated 20 June 2020’.
- (j) The northern street tree in front of No.6 Stockdale Avenue notated ‘street tree to be removed by developer/ owner of 6 Stockdale Avenue’.
- (k) The accessible parking spaces increased to 5.4 metres in length.
- (l) The existing redundant crossing notated ‘removed and replaced with kerb and channel to the satisfaction of the Responsible Authority’.
- (m) Bicycle parking facilities to generally follow the design and signage requirements set out in Clause 52.34 of the Monash Planning Scheme.
- (n) An amended Landscape Plan prepared in accordance with Condition 4.
- (o) An amended Waste Management Plan prepared in accordance with Condition 5.
- (p) A Sustainable Management Plan prepared in accordance with Condition 6.

All to the satisfaction of the Responsible Authority.

- 2 The development and use as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
- 3 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Landscaping Plan

- 4 Concurrent with the endorsement of any 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. When endorsed, the plan will form part of the Permit. The Landscape Plan must be generally in accordance with the Landscape Concept Plan prepared by Zenith Concepts (Revision F) dated February 2022 except that the plan must show:

- (a) At least one canopy tree within the front setback to have mature height of a minimum of 11 metres;



- (b) Detail of the proposed paving;
- (c) Location of external lighting (if any);
- (d) Location of retaining walls and site services; and
- (e) Provision of an in-ground, automatic watering system linked to rainwater tanks on the land servicing the main garden areas to the satisfaction of the Responsible Authority.

Waste Management Plan

- 5 Concurrent with the endorsement of plans pursuant to Condition 1, a Waste Management Plan must be submitted and approved by the Responsible Authority. The plan must be generally in accordance with the Waste Management Plan prepared by Low Impact Development Consulting, dated 9 February 2022 but revised to the satisfaction of the Responsible Authority to:
- (a) Allow for separated glass recycling as per 2020 State Government Recycling Victoria policy; and
 - (b) Provide details of waste collection process supported by scaled plans.

Sustainable Management Plan

- 6 Concurrent with the endorsement of plans pursuant to Condition 1, a Sustainable Management Plan (SMP) must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SMP to the satisfaction of the Responsible Authority.

Construction Management Plan

- 7 Prior to the commencement of any site works (including demolition and excavation), a Construction Management Plan must be submitted and approved by the Responsible Authority. No works are permitted to occur until the Plan has been endorsed by the Responsible Authority. Once endorsed, the construction management plan will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
- (a) Hours for construction activity in accordance with any other condition of this permit;
 - (b) Measures to control noise, dust and water and sediment laden runoff;
 - (c) Prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
 - (d) Measures relating to removal of hazardous or dangerous material from the site, where applicable;

- (e) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
- (f) Cleaning and maintaining surrounding road surfaces;
- (g) 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;
- (h) Public Safety and site security;
- (i) 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;
- (j) A Traffic Management Plan showing truck routes to and from the site;
- (k) 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;
- (l) Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
- (m) Contact details of key construction site staff; and
- (n) Except with the prior written consent of the Responsible Authority, a requirement that construction works must only be carried out during the following hours:
 - i Monday to Friday (inclusive) – 7.00am to 6.00pm;
 - ii Saturday – 9.00am to 1.00pm; and
 - iii No works are permitted on Sundays or Public Holidays.

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

S173 Agreement

- 8 Prior to the endorsement of plans referred to in Condition 1, the owner of the land must enter into an agreement with the Responsible Authority under Section 173 of the *Planning and Environment Act 1987*. In addition to the usual mechanical provisions, the agreement must provide for the following matters:
 - (a) That no person may reside in the building unless that person is a bona fide student or academic whether part time, full time, short term or resides there in a supervisory, management or caretaker capacity;

- (b) Car parking spaces are only permitted to be used by the occupants of the units and their visitors;
- (c) Car spaces must not be individually subdivided, on-sold or leased to any other person other than an owner or occupant of the premises;
- (d) Residents of the units will not be entitled to car parking permits for on street car parking;
- (e) Should the land cease to be used for student housing, a new planning permit may be required for an alternative use. It should be noted that any dispensation for on-site car parking given to the student accommodation development is not transferable to any proposed alternative use of the land. Any subsequent use will be assessed in accordance with the car parking requirements of the Monash Planning Scheme;
- (f) The student accommodation premises must be managed by a single entity;
- (g) A management plan prepared and implemented to the satisfaction of the Responsible Authority; and
- (h) The cost of the preparation and review of the Section 173 Agreement and its registration on the title of the land must be borne by the owner of the land.

Operational Management Plan

- 9 Prior to the commencement of the use an Operational Management Plan concerning the student accommodation prepared to the satisfaction of the Responsible Authority must be submitted and approved by the Responsible Authority. The plan should detail but not be limited to:
- (a) Student accommodation units are to managed and remain under the control of a single operator responsible for the operation and maintenance of the entire premises;
 - (b) The contact details of the management of the premises displayed in a manner and location that it is visible to any person entering the site. This information is to be updated as required immediately following any change to the nominated responsible contact person;
 - (c) After hours contact details for management of the facility;
 - (d) Management of the car park including access arrangements for occupants and visitors and how car parking spaces will be allocated; and
 - (e) Maintenance of buildings and grounds, including all landscaped areas.

When approved, the Operational Management Plan will be endorsed to form part of this permit and must be implemented to the satisfaction of the Responsible Authority.

Car Parking

- 10 Before the use starts or any building is occupied, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed to the satisfaction of the Responsible Authority;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
 - (d) drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority; and
 - (e) line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.

Parking areas and access lanes must be kept available for these purposes at all times.

Landscaping and Tree Retention

- 11 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained (including trees on the nature strip) during the demolition and construction period of the development hereby permitted without the prior written consent of the Responsible Authority.
- 12 All works (including demolition works) within the dripline of any tree to be retained (including trees on nature strip and adjoining properties) shall be supervised by a qualified landscape architect or horticulturist who shall ensure that the works are done in a manner which protects and minimises any damage to those trees.
- 13 Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.
- 14 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.

Drainage

- 15 The site must be drained to the satisfaction of the Responsible Authority

- 16 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.
- 17 All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council's Engineering Department prior to drainage works commencing.

Other

- 18 Prior to the occupancy of the development, all fencing must be constructed in accordance with the endorsed plans and be in good condition to the satisfaction of the Responsible Authority.
- 19 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.

Time for Starting and Completion

- 20 In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
 - (a) The development is 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*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

– End of conditions –