VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference Nos. P2249/2018 & P2499/2018  Permit Application no. TPA/48803 |

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| APPLICANTs |  |
| P2249/2018 | Therese Desmond |
| P2499/2018 | Steller Care Oakleigh Pty Ltd |
| responsible authority | Monash City Council |
| RESPONDENTs |  |
| P2249/2018 | Steller Care Oakleigh Pty Ltd |
| P2499/2018 | Therese Desmond |
| SUBJECT LAND | 1-9 Allen Street and 777-781 Warrigal Road  OAKLEIGH VIC 3166 |
| WHERE HELD | Melbourne |
| BEFORE | S.R. Cimino, Member |
| HEARING TYPE | Compulsory Conference |
| DATE OF HEARING | 27 March 2019 |
| DATE OF ORDER | 12 April 2019 |

# Order

### P2499/2018 - Amend application for review:

1. Pursuant to section 127 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act* 1998, the application in P2499/2018 is amended by deleting condition 1(f) as a condition under review.

### Amend permit application

1. Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & 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: | VIA Architects |
| Drawing numbers: | TP-000 Rev C, TP-010 Rev F, TP-100 Rev L, TP-101 Rev L, TP-102 Rev K, TP-103 G, TP200 Rev G, TP201 Rev H, TP202 Rev D, TP-300 Rev F and TP-500 Rev A |
| Dated: | 19 March 2019 |

### Grant permit

1. In application Nos. P2249/2018 and P2499/2018 (in so far as it relates to conditions 1(i), 1(j), 9 and 30) the Responsible Authority’s decision is varied.
2. In permit application no. TPA/48803 a permit is granted and directed to be issued for the land at 1-9 Allen Street and 777-781 Warrigal Road OAKLEIGH VIC 3166 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

Construction of an aged care facility

Alteration of access to a road in a Road Zone 1

### Hearing vacated

1. The hearing listed to commence on **9 May 2019** is cancelled and the dates vacated.

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| **S.R. Cimino**  **Member** |  |  |

# Appearances

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| Applicant for Review in P2249/2018 and Respondent in P2499/2018: | Mr J. Livingston, planning consultant, JLP Melbourne |
| Applicant for Review in P2499/2018 and Respondent in P2249/2018: | Mr A. Bromley, town planner |
| For Responsible Authority: | Ms T. Nguyen, solicitor, Maddocks, with Mr J. Heitmann, Principal Planner |

# reasons

1. This matter relates to two applications concerning a proposal to develop an aged acre facility on the subject land. An objector to the permit application, Ms Desmond, has brought application under Section 82 of the *Planning and Environment Act 1987* to review the Council’s decision to grant a permit. The permit applicant, Steller Care Oakleigh Pty Ltd has made application under Section 80 of the Act to review conditions.
2. At the compulsory conference, the parties reached in principle agreement. The agreement was subject to the Council confirming its consent after the compulsory conference.
3. By email letter dated 8 April 2019, the Council confirms its consent to the ‘version 2’ agreement signed by the parties. This effectively resolves all matters in dispute.
4. The parties agree to the grant of a permit subject to changes shown on amended plans and conditions on the permit.
5. In giving its consent, the Responsible Authority confirms that the amended plans substituted as the application plans do not give rise to any new issues in terms of impacts on the amenity of neighbouring properties (other than those who are parties) and notice is not required.
6. Therefore, pursuant to section 93(1) of the *Victorian Civil and Administrative Tribunal Act 1998*, this order is made at the request of the parties and with their consent.
7. The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
8. 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 Act, 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 *Planning and Environment Act 1987*;
9. the proposed orders will not result in any change to the proposed use or development which would materially affect any person other than the parties to the proceeding.
10. Based on the information available to the Tribunal, I consider it is appropriate to make these orders.

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| **S.R. Cimino**  **Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No | TPA/48803 |
| Land | 1-9 Allen Street & 777-781 Warrigal Road OAKLEIGH VIC 3166 |

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| What the permit allowS |
| In accordance with the endorsed plans:   * Construction of an aged care facility * Alteration of access to a road in a Road Zone 1 |

## Conditions

1. Before the development starts, one copy (electronic) of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. The submitted plans must clearly delineate and highlight any changes. 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 by VIA Architects, drawing numbers TP-000 Rev C, TP-010 Rev F, TP-100 Rev L, TP-101 Rev L, TP-102 Rev K, TP-103 G, TP200 Rev G, TP201 Rev H, TP202 Rev D, TP-300 Rev F and TP-500 Rev A, all dated 19 March 2019, but modified to show:

* 1. The lower ground level of the development setback a minimum of 6 metres from the eastern boundary along with any associated reconfiguration to the internal layout.
  2. The ground level of the development setback a minimum of 6 metres from the eastern boundary along with any associated reconfiguration to the internal layout.
  3. Details of any required retaining walls adjacent to the northern boundary.
  4. Windows and balconies of rooms located within the western wing of the development orientated to the north-east screened to prevent overlooking of adjacent to 775 Warrigal Road secluded private open space in accordance with the requirements of Clause 55.04-6.
  5. Details of all mechanical ventilation (including heating and cooling units) located outside the building or on the rooftop with appropriate screening incorporated into the architectural design of the building. Heating and cooling units must not be located on the balconies, facade of the building or visible from outside the property.
  6. The proposed vehicle crossovers to provide clearance to the adjacent nature strip trees in accordance with the requirements of Council’s Horticulture Department.
  7. The location and dimension of all services and any required electricity substations, fire services, gas and water meters, suitable painted, screened and landscaped to the satisfaction of the Responsible Authority to minimize their visual prominence.
  8. The porte-cochere vehicle crossings perpendicular to the road and the porte-cochere area modified accordingly.
  9. Provision of swept path diagrams that demonstrate functional ingress and egress to car spaces at the northern end of both vehicle access aisles within the basement car park.
  10. A notation confirming that a minimum headroom clearance of 3.5m is provided to accommodate loading & waste vehicle access within the lower ground loading area.
  11. Provision of a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres) extending at least 2.0 metres long x 2.5 metres deep (within the property) from the edge of the exit lane of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
  12. Provision of a double skin acoustic 2.0 metre high timber fence along the entire length of the northern boundary.
  13. Provision of double glazing to all external habitable room windows

All to the satisfaction of the responsible authority.

1. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
2. Once the development has commenced it must be continued and completed to the satisfaction of the Responsible Authority.
3. The amenity of the area must not be detrimentally affected by the use or development, through the:
   1. transport of materials, goods or commodities to or from the land;
   2. appearance of any building, works or materials;
   3. emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
   4. presence of vermin;
4. Concurrent with the endorsement of any plans, 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. The report must include, but is not limited to, the following:
   1. Demonstration of how ‘best practice’ sustainability measures have been addressed, having regard to the relevant aspects of Clause 21.13 of the Planning Scheme.
   2. Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
   3. Document the means by which the appropriate target or performance is to be achieved.
   4. Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
   5. Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.
   6. Any relevant requirements of the Condition 1 sub-clauses hereof.

All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to the endorsed Sustainable Management Plan may occur without written consent of the Responsible Authority and (to the extent material and necessary) any relevant flow-on changes to the design response must be also incorporated into the endorsed architectural plans.

1. Prior to the occupation any of the building approved under this permit, a report from the author of the endorsed Sustainable Management Plan (or similarly qualified person or company) must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that (in relation to the relevant completed stage of the building ready for occupation) all measures specified in the Sustainable Management Plan have been implemented in accordance with the approved plan.
2. All existing vegetation shown on the endorsed plans must be suitably marked before any development starts on the site and that vegetation must not be removed, destroyed or lopped without the written consent of the Responsible Authority.
3. Prior to the commencement of any works that are permitted by this permit, all trees that are to be retained, or are located within or adjacent to any works area, shall be marked and provided with a protective barricade and verified by an authorised officer of the Responsible Authority.
4. No form of public address system may be installed so as to be audible from outside the site.
5. No goods must be stored or left exposed outside the building so as to be visible from any public road or thoroughfare.
6. 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 so as to cause offence to persons outside the land.
7. Prior to the commencement of works on the site, the owner shall prepare a Waste Management Plan for the collection and disposal of garbage and recyclables for all uses on the site by private contractor. The Waste Management Plan shall provide for:
   1. The method of collection of garbage and recyclables for uses;
   2. Designation of methods of collection including the need to provide for private services;
   3. Appropriate areas of bin storage on site and areas for bin storage on collection days;
   4. Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas;
   5. Litter management.

A copy of this plan must be submitted to and approved by Council. Once approved the plan will be endorsed to form part of this permit.

1. 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.
2. Before the development starts, a Construction Management Plan must be prepared and submitted to the Responsible Authority for approval. The plan must be to the satisfaction of the Responsible Authority. Once approved, the plan must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
   1. measures to control noise, dust and water runoff;
   2. prevention of silt or other pollutants from entering into the Council’s underground drainage system or road network;
   3. the location of where building materials are to be kept during construction;
   4. site security;
   5. maintenance of safe movements of vehicles to and from the site during the construction phase;
   6. on-site parking of vehicles associated with construction of the development;
   7. wash down areas for trucks and vehicles associated with construction activities;
   8. cleaning and maintaining surrounding road surfaces;
   9. a requirement that construction works must only be carried out during the following hours:
      1. Monday to Friday (inclusive) – 7.00am to 6.00pm;
      2. Saturday – 9.00am to 1.00pm;
      3. Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings. This does not include excavation or the use of heavy machinery).
3. Before the development permitted is completed, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
   1. constructed to the satisfaction of the Responsible Authority;
   2. properly formed to such levels that they can be used in accordance with the plans;
   3. surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
   4. drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;
   5. 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.

1. The car parking layout of the development shall generally follow the Design Standards for car parking set out in Clause 52.06-8 of the Monash Planning Scheme to the satisfaction of the Responsible Authority.
2. 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. The plan must show the proposed landscape treatment of the site including:-
   1. The location of all existing trees and other vegetation to be retained on site.
   2. Provision of canopy trees with spreading crowns located throughout the site including the courtyard spaces within the development.
   3. Planting to soften the appearance of hard surface areas such as driveways and other paved areas.
   4. A schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material
   5. The location and details of all fencing.
   6. The extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
   7. Details of all proposed hard surface materials including pathways, patio or decked areas.
   8. Landscape treatment of the mounding within the Highbury Road frontage.

When approved the plan will be endorsed and will then form part of the permit.

1. 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.
2. The occupier of the premises must ensure that any noise emanating from the premises, during and post construction, must not exceed the standards of the State Environment Protection Policies No. N1 and must on request provide evidence to Council of Compliance with the policies.
3. Air-conditioning and other plant and equipment installed on or within the buildings must be so positioned and baffled that any noise emitted complies with the appropriate Australian Standards and EPA requirements.
4. Before the development starts, a site layout plan drawn to scale and dimensioned must be approved by the Responsible Authority.

The plans must show a drainage scheme providing for the collection of stormwater within the site and for the conveying of the stormwater to the nominated point of discharge.

The nominated point of discharge is the west of the property south-east corner of the property where the entire sites stormwater must be collected and free drained via a pipe to the Council pit in the naturestrip of the property to Council Standards

If the point of discharge cannot be located then notify Council’s Engineering Department immediately.

1. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing.
2. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties. The on-site drainage system must prevent discharge from driveways onto the footpath. Such a system may include either:
   1. trench grates (150mm minimum internal width) located within the property; and/or
   2. shaping the driveway so that water is collected in a grated pit on the property: and/or
   3. another Council approved equivalent
3. The new vehicle crossing must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
4. All new vehicle crossings are to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
5. The existing redundant crossings are to be removed and replaced with naturestrip, kerb and channel to the Council Standards.
6. Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
7. Engineering permits must be obtained for new or altered vehicle crossings and for new connections to Council pits and these works are to be inspected by Council's Engineering Department. A refundable security deposit of $500 is to be paid prior to the drainage works commencing.
8. The loading and unloading of goods from vehicles must only be carried out on the land.
9. Deliveries to and from the site including the collection of waste must only take place between the following hours:
   1. 7:00am-6:00pm Monday to Saturday
   2. 8:00am – 3:00pm Sundays (food deliveries only).

### Vic Roads Conditions

1. Prior to the commencement of the use or occupation of the development, all disused or redundant vehicle crossings must be removed and the area reinstated to the satisfaction of the Responsible Authority and at no cost to VicRoads or the Responsible Authority.
2. This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
   1. The development is not started before 2 years from the date of issue.
   2. 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,* the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

**– End of conditions –**