

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P917/2021
PERMIT APPLICATION NO.TPA52295

CATCHWORDS

Section 77 *Planning and Environment Act 1987*; Monash Planning Scheme; Commercial 1 Zone; Activity Centre; Built form; Height; Vehicle access.

APPLICANT	D & G Brothers Management Group Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
REFERRAL AUTHORITY	Head, Transport for Victoria
SUBJECT LAND	409 Clayton Road CLAYTON VIC 3168
HEARING TYPE	Hearing
DATES OF HEARING	26, 29 & 30 November and 1 December 2021
DATE OF INTERIM ORDERS	2 & 13 December 2021 and 24 February 2022
DATE OF ORDER	18 March 2022
CITATION	D &G Brothers Management Group Pty Ltd v Monash CC [2022] VCAT 288

ORDER

- 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:

- Prepared by: Ewart Leaf
- Drawing numbers: TP-000.D, TP-010.D, TP-011.D, TP-012.D, TP-020.D, TP-021.D, TP-022.D, TP-023.D, TP-024.D, TP-025.D, TP-026.D, TP-027.D, TP-028.D, TP-029.D, TP-030.D, TP-100.D, TP-119.D, TP-101.D, TP-102.D, TP-103.D, TP-104.D, TP-105.D, TP-106.D, TP-107.D, TP-108.D, TP-109.D, TP-110.D, TP-111.D, TP-112.D, TP-113.D, TP-114.D, TP-118.D, TP-150.D, TP-400.D, TP-401.D, TP-402.D, TP-403.D, TP-500.D, TP-501.D, TP-900.D, TP-901.D, TP-902.D & TP-903.D



- Dated: 15.10.2021 – Issue for VCAT

2 By no later than **30 March 2022**, the applicant must advise the Tribunal in writing, whether it wishes to take up the opportunity to amend the plans of the proposed development, and if so, by what date the amended plans will be prepared. A copy of the response to this order must be provided to the other parties at the same time.

Bill Sibonis
Senior Member

Ann Keddie
Member



APPEARANCES

For D & G Brothers
Management Group
Pty Ltd

Ms S Brennan SC and Ms J Sharp of counsel,
instructed by Hall and Wilcox Lawyers. Evidence
was called from:

- Mr V Gnanakone, Traffic Engineer of One Mile
Grid Pty Ltd
- Mr M O'Dwyer, Architect of H2o Architects Pty
Ltd
- Mr J Talacko, Environmental Sustainability
Consultant of Ark Resources Pty Ltd
- Ms S Jordan, Town Planner of Sophie Jordan
Consulting Pty Ltd

The evidence of Mr D Fraher, visual image expert of
FKD Studio was tendered. Mr Fraher was not called
to give oral evidence.

For Monash City
Council

Mr D Vorchheimer, Lawyer of HWL Ebsworth
Lawyers. Evidence was called from:

- Mr T Biles, Town Planner of ratio:consultants pty
ltd

For Head, Transport
for Victoria

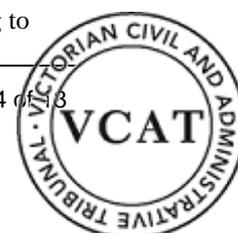
Mr P Vassiliadis, Town Planner



INFORMATION

Description of proposal	The construction of a 14-storey building (plus basement) accommodating shops, offices, dwellings and associated car parking.
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 (Planning Scheme)
Zone and overlays	Commercial 1 Zone (C1Z) Abuttal to a road in Transport Zone 2 (TRZ2)
Permit requirements	Cl. 34.01-2 & 71.03-2 (use of land in C1Z for dwellings) Cl. 34.01-4 (the construction of a building and the construction and carrying out of works on land in C1Z) Cl. 52.06-3 (reduction of the car parking requirements) Cl. 52.29 (alteration of access to a road in TRZ2)
Key scheme policies and provisions ¹	Cl. 11, 15, 16, 18, 19, 21, 22.03, 22.04, 22.13, 52.06, 52.29, 52.34, 53.18, 58 & 65
Land description	The subject land is located on the north-western corner of Clayton Road and Centre Road in Clayton. The land is vacant and was previously used as a service station. It is an irregular landholding with a combined frontage of approximately 85 metres and an overall area of around 2,100 square metres. To the north is a shop, while to the west is a supermarket. To the east, on the opposite side of Clayton Road are shops. To the south, on the other side of Centre Road, is an automotive business and a take-away food premises. The property forms part, and is located at the southern termination, of a strip of shops and other commercial premises within the Clayton Major Activity Centre.
Tribunal inspection	A site inspection was undertaken after the hearing.

¹ The parties were provided with the opportunity to make submissions addressing any implications arising from the gazettal of Amendments VC174 and VC204 to the Planning Scheme relating to this proceeding. Submissions have been received and we have considered these.

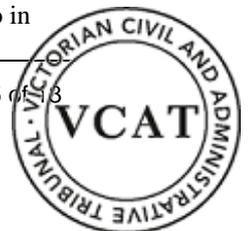


REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 In November 2020, an application was made to the Monash City Council (**Council**) for a planning permit to construct a 17-storey mixed-use building on the subject land. The building was to accommodate shops, offices and dwellings – including both social and affordable housing. Notice of the application was given and objections were received. In addition, the application was referred to the Head, Transport for Victoria (**HTV**), but no response was provided before the Council decided the application.
- 2 Consistent with the recommendation of its planning officer, the Council determined to refuse a permit on grounds which refer to matters of inconsistency with the Clayton Activity Centre Precinct Plan (**CACPP**), urban design, streetscape, equitable development, car parking, internal amenity, and a lack of dwelling diversity.
- 3 This is an application to the Tribunal for a review of the Council’s decision.
- 4 Prior to the hearing, the applicant prepared and circulated amended plans of the proposal. On the basis of the amended plans, the Council revised its grounds and no longer pursued the ground relating to equitable development. These amended plans were substituted for the planning permit application plans at the commencement of the hearing.
- 5 The HTV is a party to the proceeding and opposes the location of the proposed vehicular access in Centre Road for reasons relating to road safety.
- 6 Based on the submissions, the key issues that arose in this proceeding may be expressed as follows:
 - Is the development an acceptable response to the site’s physical and strategic context?
 - Is the location of the proposed vehicle access acceptable?
 - Is sufficient car parking provided?
- 7 Having considered the submissions and evidence, with regard to the relevant policies and provisions of the Planning Scheme, assisted by our inspection, we have decided that the proposed development should not be approved in its current form. We will, however, provide the applicant with the opportunity to prepare amended plans responding to our concerns, for our consideration. Our reasons follow.

² 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.



WHAT IS THE RELEVANT PLANNING CONTEXT?

8 The subject land is in the C1Z, the purpose of which is:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.

To provide for residential uses at densities complementary to the role and scale of the commercial centre.

9 The submissions and evidence confirm that the site forms part of the Clayton Major Activity Centre (**CMAC**) and the Monash National Employment and Innovation Cluster (**MNEIC**). There is extensive and detailed policy within the Planning Policy Framework, and objectives and strategies within the Municipal Strategic Statement which promote and facilitate specific outcomes on sites in these locations to take advantage of their attributes.³ These policies, objectives and strategies are voluminous and were comprehensively addressed by the parties and the witnesses during the course of the hearing. While we will not repeat them here, we consider that they can be distilled as follows:

- Higher density residential and mixed-use developments are to be directed to activity centres and the MNEIC to make optimum use of the services available.
- Directing higher density residential to activity centres and the MNEIC will assist in accommodating population growth while protecting the garden character of the municipality's residential areas. Such development will also support the ongoing growth and economic viability of activity centres and their constituent commercial uses.
- A broad mix of uses is encouraged in activity centres.
- A variety of dwelling types are encouraged to provide housing diversity to cater for the needs of varying households and promote greater housing affordability and choice.
- The provision of social housing close to public transport and retail and community facilities is to be increased.
- The consolidation of urban development and integration of land use and transport is encouraged.
- The development of well-designed housing that provides a high level of amenity is encouraged.
- Medium rise residential development is encouraged in the CMAC.

³ Clauses 11.01R, 11.01S, 11.03-1S, 15.01-4R, 15.02-1S, 16.01-1R, 16.01-1S, 16.01-2S, 21.01, 21.05, 21.04, 21.06, 22.03 & 22.13.



- The CMAC and the MNEIC are expected to experience major redevelopment as key areas for employment growth in Melbourne, with the core anticipated to accommodate growth and more diverse housing needs.
 - Buildings are to make a positive contribution to their context and enhance the public realm. High quality architectural and urban design outcomes are encouraged.
 - The scale and character of future development is to create or enhance a high-amenity built form environment.
 - Development in the CMAC should generally be compatible with an adopted Structure Plan.
 - The development should achieve best practice in environmentally sustainable development from design through the construction and operation.
- 10 The Council adopted the CACPP in January 2020. The Council has not, at this point in time, proceeded to prepare an amendment to introduce the vision, principles and expected outcomes of the CACPP into the Planning Scheme. The Council explained that, while it is the Council’s intention to prepare such an amendment, it is awaiting the finalisation of the proposed Suburban Rail Loop (**SRL**) before doing so, in the event that the CACPP requires revision. The SRL includes a proposed underground railway station at Clayton and the associated development of a transport ‘superhub’. It is understood that the Suburban Rail Loop Authority will assume responsibility for planning in the immediate vicinity of the proposed station.
- 11 As an adopted document, regard can be had to the CACPP pursuant to section 60(1A)(g) of the *Planning and Environment Act 1987*. Indeed, no party or expert disputed that the CACPP is relevant to our consideration of this proposal. The applicant submitted, however, that the Council’s reliance on the CACPP must be considered in light of the fact that the CACPP:
- is not referenced in the Planning Scheme;
 - has not been through an independent panel;
 - has not been tested through the Tribunal or any court;
 - does not presently form the basis for any publicly available proposed planning scheme provisions; and
 - contemplates discretionary height provisions, rather than mandatory.
- 12 That said, the CACPP was referred to in some detail in both submissions and evidence. While the parties agree it is relevant, what is disputed is the weight which should be given to its recommendations, in particular the preferred building heights. We agree with the applicant that the above



factors act to temper the weight which can be given to the CACPP in the assessment and determination of this application.

- 13 According to the CACPP, it provides a ‘clear framework’ outlining how and where growth and change in employment, land use, housing, built form and transport infrastructure should occur. The CACPP identifies the subject land as a ‘key site opportunity’ which is a description applied to ‘large, underutilised sites with potential to deliver high quality developments that diversify the mix of uses in the centre’. The land is also identified as a strategic site that provides ‘an opportunity for taller built form to create a strong entrance into the Clayton Road shopping strip’.
- 14 In addressing built form outcomes, the CACPP identifies that one element of a strong built form character is taller buildings that punctuate the skyline and create visual interest. It goes on to state that it aims to locate taller buildings within the commercial core, on larger redevelopment sites and in prominent locations to contribute to creating a stronger entrance to the Clayton. The related Figure 10 identifies the preferred heights to achieve this and also identifies key areas in the activity centre where sunlight should be provided to footpaths and public spaces. A preferred building height of 10 storeys/32m-35m is shown for the review site. The same is specified for the land on the opposite (north-eastern) corner Clayton Road and Centre Road including the adjacent property to the east which is developed as a car park, and for the land to the west of the review site (occupied by a supermarket). The 10-storey height extends north along Cooke Street over what is presently at-grade car parking. For the properties along Clayton Road, an 8 storey/28m-32m height is shown.
- 15 The objective in respect of built form is to create a contemporary and exciting identity for the activity centre through high quality design and architectural excellence. Strategies related to this objective include:
 - Encourage excellence in building design within both commercial and residential areas so that development responds to the characteristics of the site and its context.
 - Maximise building height on larger sites where interface issues can be minimised.
 - Strengthen sense of place and arrival in the Clayton Activity Centre by providing buildings of exemplary architectural quality on prominent sites and in locations adjacent to existing and proposed public spaces.
 - Ensure buildings do not overshadow key public spaces such as key commercial areas, streets, parks and plazas.
 - Ensure buildings do not overwhelm the footpaths of retail areas with taller element recessed from the street. [sic]
 - Ensure buildings integrate with and contribute positively to streetscapes and public spaces by providing a continuous



network of fine-grain active frontages with clear glazed ground floors.

- Ensure that all development supports a sustainable activity centre through high ESD standards, including energy efficiency, water management and use of low embodied energy materials.

- 16 The review site is within Precinct 1: Central retail. The ‘Precinct Overview’ includes reference to higher-scale development being visible at the railway station, at the southern entry to the activity centre (where the review site is located) and along Cooke Street creating variation in the skyline and marking these ‘important locations’. Amongst the ‘requirements’ is that new development should maintain solar access to footpaths and public spaces within 4.0 metres of the eastern and western boundary of Clayton Road between 10.00 am and 2.00 pm on 22 September (the equinox).
- 17 No party sought to argue that the CACPP should be considered to be a seriously entertained planning proposal (or similar). The parties agreed that the weight given to the CACPP is limited by the fact that it has not progressed beyond Council adoption to take the form of a proposed Planning Scheme amendment. The parties accepted, however, that the CACPP provides sound planning principles for the future development of the activity centre and regard should be had to these in the assessment of the proposal.

IS THE PROPOSED DEVELOPMENT AN ACCEPTABLE RESPONSE TO THE SITE’S PHYSICAL AND STRATEGIC CONTEXT?

- 18 The key issue in dispute with respect to the built form is its height. There are no provisions or policies contained in the Planning Scheme which specify a preferred building height for this land, or for other land within the activity centre.
- 19 However, the CACPP indicates the Council’s preference for heights within the centre. Centre Road marks the southern perimeter of the activity centre and, indeed, the municipality. Along Centre Road, Figure 10 shows heights of six storeys on the west side of Cooke Street rising to 10 storeys on the eastern side. This height continues across Clayton Road to Thomas Street. Progressing northwards from Centre Road along Cooke Street the 10-storey height continues, but drops to eight storeys along both sides of Clayton Road as far as Dunston Street. The CACPP seeks a ‘strong built form character’ which it says can be realised by taller buildings creating visual interest. A strategy is to encourage excellence in building design ‘so that development responds to the characteristics of the site and its context’.
- 20 The Council’s submission is that 14 storeys is too high. It argued that, having regard to the built form expectations derived from the hierarchy of



heights outlined in clause 21.06,⁴ the development should meet the preferred height of 10 storeys (32m-35m) specified in the CACPP. Mr Biles' evidence is that this height can be exceeded but not to the extent proposed here. He said that the relatively flat topography and the likelihood that many of the narrow lots along Clayton Road will remain unconsolidated for some time, limiting their ability to achieve the height envisaged, means that a building of approximately 10 storeys will provide an appropriate marker to the southern entrance of the activity centre. He notes that, further north in Clayton Road, large sites create opportunity for the taller built form sought.

- 21 In Mr Biles' opinion, a development of up to 12 storeys could be acceptable on the land, subject to a design of the upper levels which avoids overshadowing of the footpath on the eastern side of Clayton Road up to 2.00 pm.
- 22 The applicant's submission is that the Council's reference to existing height conditions does not acknowledge that in the future the Clayton Activity Centre will look very different. It said that there is a clear direction towards site consolidation to achieve the future heights envisaged along Clayton Road.
- 23 Ms Jordan's analysis of the challenges⁵ associated with the provision of new housing in municipalities such as Monash concludes that a project such as this should be embraced because it has the attributes sought for new housing, in that it:
- is highly accessible to public transport networks to provide residents a real choice over private transport;
 - is surrounded by a range of services and facilities commensurate with the activity centre hierarchy;
 - provides a mix of apartment sizes to cater for various types of household structures and income levels;
 - delivers on quality internal and external amenity;
 - achieves a range of sustainable design initiatives; and
 - provides communal active spaces to assist with community building.
- 24 As a 'key renewal site', Ms Jordan says that the site has the potential to accommodate a distinctive form without prejudicing the future development of the centre.
- 25 Mr O'Dwyer supports this view. He considers that the proposed height of 14 storeys is acceptable having regard to its strategic context, the architecture of the building (including its materials and finishes), its

⁴ Major Activity and Neighbourhood Centres

⁵ Ms Jordan's evidence dated 12 November 2021 [40]-[47]



sustainability features, interface with the public realm, and its siting relative to adjoining properties and the streetscape.

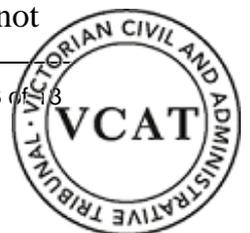
- 26 The CACPP supports the development of tall buildings on large sites and at the entry to the activity centre. The proposal achieves both. In reviewing the preferred heights identified in the CACPP, the applicant observed the absence of a distinction between the building height envisaged for sites extending along Cooke Street and those for sites on the corner of Centre Road and Clayton Road. It was submitted that, in order to deliver the vision of taller buildings on corner sites that would punctuate the skyline, greater height should be permitted. We consider that this is a fair submission, acknowledging that the CACPP has not been subject to public exhibition as part of a proposed amendment or subsequent review by an independent panel where such issues can be scrutinised.
- 27 Given the size of the site, its location at the prominent intersection of two main roads and at the entry to the activity centre from the south, we consider that there is a basis to support a taller building on the land. Under existing conditions, a building at 10 storeys will be prominent, but over time as the centre develops and multi-storey buildings emerge, this prominence will diminish.
- 28 We note that along Cooke Street a change from six to 10 storeys is envisaged, but in the case of the review site there is no difference between the height sought and that of neighbouring sites to its east and west and only a two-storey change envisaged to the north. In that circumstance, the opportunity to achieve a taller building marking the southern entry to the activity centre will not be realised to a meaningful extent.
- 29 Additional to this are positive attributes such as the architecture of the building, the activated frontage, its ESD performance, its siting to provide equitable development opportunities for adjoining properties, the internal amenity of the dwellings and the provision of social and affordable housing.
- 30 When consideration is given to all these factors, we agree with the applicant that there is sufficient reason to support a building of more than 10 storeys on the land. Having regard to the submissions and evidence, we consider that what is to be decided is whether the building should be 12 storeys or 14 storeys, as proposed.
- 31 The objective of clause 15.01-2S is to achieve building outcomes that contribute positively to the local context and enhance the public realm. Two of the related strategies are:
- Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.
 - Ensure the form, scale and appearance of development enhances the function and amenity of the public realm.



- 32 The reference in the CACPP to avoiding overshadowing on the eastern and western sides of Clayton Road (to within 4.0 metres of the property boundary) during the equinox between 10.00 am and 2.00 pm we consider is consistent with the above objective and strategies. It is an outcome which we support as protecting solar access within the activity centre is, in our view, part of creating a pleasant environment for pedestrians. Solar access is an important contributor to the amenity of the public realm and should reasonably be protected. The material available to us confirms that a 10-storey building on the review site of up to 35 metres would avoid overshadowing of the eastern footpath Clayton Road before 2.00 pm. At 2.00 pm there is encroachment onto the footpath but it is not possible to say with any degree of precision whether it extends into that part which is within 4.0 metres of the properties. To the extent that it may, it appears minimal.
- 33 Having considered the submissions and the evidence, and having had the benefit of a site inspection, our assessment is that a 14-storey height is acceptable for this site, subject to modification to address the impacts on solar access to the public realm. We have reached this conclusion having regard to the location on a prominent corner at the intersection of two main roads, at the entry to the municipality and to a major activity centre from the south, and to the vision for development embodied in the CACPP. Specifically, noting the preferred heights for surrounding land to the east and west along Centre Road, to the north-west along Cooke Street, a building of 10 or 12 storeys will not stand in sufficient distinction from neighbouring development to reflect the strategic nature of the site or realise the ‘opportunity for taller built form to create a strong entrance into the Clayton Road shopping strip’.
- 34 At 10 storeys it would be consistent with other buildings that are likely to emerge on sites to the west, north-west and east, where this is the preferred height. At 12 storeys, a two-storey differential would not result in the building manifesting in a ‘taller built form’ but, rather, one which would appear as a relatively modest graduation in height. A 14-storey height will achieve the vision of the CACPP with respect to the strategic nature of the site. While it will be a prominent building, it is an acceptable outcome in the site’s strategic context.
- 35 We acknowledge that, from the north, there is a six-storey differential with the preferred heights and that this is not insignificant. We note that along Clayton Road there is a fine-grain subdivision pattern. However, as observed during our site inspection, there are premises which span a number of lots, indicative of potential site consolidation or amalgamation which may allow for development that exceeds the preferred eight-storey height. This would have the effect of reducing the extent of the difference in height between this development and the buildings which emerge to the north along Clayton Road.



- 36 We accept Mr Biles' evidence that the building should be modified to ensure that the outcome sought by the CACPP with respect to solar access is met. This will require some alteration to those parts of the building above 10 storeys. We agree with Mr O'Dwyer that the creation of a 'cap' at the top of the building should be avoided. It is an outcome which we consider would not integrate successfully with the architecture of the proposed building as a whole. The preferable treatment would be some reconfiguration of the upper levels in order to reduce the extent of shadow.
- 37 We have concluded that the building should be modified to achieve solar access to the footpath on the eastern side of Clayton Road in accordance with the CACPP. Given the prominence of the development, the importance of its role at the southern entry to the activity centre, and the various design modifications which could be adopted to achieve this outcome, we are not persuaded that this can successfully be achieved by a permit condition. The resultant built form is uncertain. Rather, we have decided to provide the opportunity for the applicant to prepare amended plans to demonstrate how the building can be modified to achieve the solar access sought by the CACPP. We will provide the parties with the opportunity to make further submissions, should they wish, responding to the amended plans.
- 38 Apart from what it sees as excessive height the Council's submission is that aspects like the design of the street interface, the canopy and the proposed mix of apartments require amendment.
- 39 The applicant submitted that the building is well resolved. It emphasised many features of the design including the high quality materials and finishes proposed, the high level of amenity in the apartment design and the lack of impacts on adjoining properties. Its submission is that this high level of design will not be compromised by future development to the north or west due to the setback proposed to the building above the podium.
- 40 At the hearing several design issues apart from the height were raised. Mr Biles's opinion is that the elevational design treatments, although highly articulated, would not contribute to a visually interesting skyline. In addition, he sought more varied and interesting materials for the podium levels. His conclusion was that the proposal does not meet the CACPP's recognition of the opportunity to provide buildings of exemplary architectural quality on prominent sites. He also criticised the size of the retail tenancies because they fail to respond to the fine grain of the retail strip to the north. He said the full height glazing lacks depth, texture and visual interest, and that the overhang of Level 1 approximately 5.0 metres above the street, fails to give an adequate sense of shelter.
- 41 Mr O'Dwyer, in contrast, said that the proposal in terms of architectural and urban design is an appropriate response to the site. It was his evidence that the architectural elevations which form part of the substituted plans did not



well explain the contrast that will be afforded by the interplay of the grey render and perforated bronze balustrading. He said the elevations will also be enlivened by the staggered balcony projections and that the retail spaces will contribute to the activation of the street precisely because of the amount of glazing proposed.

- 42 In response to Mr Biles' concerns, the applicant acknowledged that the canopy could be re-designed to achieve increased coverage for pedestrians particularly in Centre Road and that greater articulation could be provided to the podium at the interface with the public realm. In response to our order,⁶ the applicant submitted a plan and elevation which showed these changes.⁷
- 43 The amended drawings depict a lightweight framed glazed 1600mm wide canopy extending for the full Centre Road/Clayton Road frontage. The height above the footpath is not dimensioned but appears to be around 3.0 metres and more or less in line with those existing canopies to the north. We consider that this is an appropriate addition to the proposed design and that this canopy should be included. The proposed redesign provides continuous rain and wind protection along the entire frontage. Combined with the expanded and upgraded street level public realm proposed as part of the development, which includes both hard and soft landscaping, this will achieve an enhanced public realm experience on this corner, which marks the entrance to the activity centre. We note that, as proposed, the canopy would extend over the Council footpath around 750mm for small sections of the Centre Road and Clayton Road interfaces, due to the irregular site boundary/road alignment configuration.
- 44 The amended drawings also show increased vertical division to the podium façade and the introduction of further articulation, which we find is acceptable and enhance the presentation to the public realm.
- 45 Mr Talacko made a number of minor design recommendations which he said would result in the proposal achieving performance outcomes required to achieve the Council's 'best practice' standard in relation to environmental sustainability. These included additional double hung sash insertions to the hinged doors in the living rooms of the north facing apartment 07 on the third to the thirteenth floor and apartment 08 of the third to the tenth floor, in order to facilitate natural ventilation. He also recommended that one in every five windows at the mezzanine office level should be openable. We note that although this recommendation was made for ESD reasons, it will in addition help enliven the façade at this level.

⁶ Dated 2 December 2021

⁷ As shown in drawings TP-100.E, TP-400.E, TP401.E, TP-402.E and TP-403.E



IS THE LOCATION OF THE PROPOSED VEHICLE ACCESS ACCEPTABLE?

- 46 The HTV opposes the proposed location of the vehicle access in Centre Road, for road safety reasons. Its submission is that the crossover should be located in Clayton Road. This position is not shared by the Council or its traffic engineers. Further, all the planning/urban design and traffic experts consider that the appropriate location for the crossover is Centre Road.
- 47 The submission of the HTV at the hearing referred to the objective of clause 18.01-1S which is to create a safe and sustainable transport system by integrating land and transport; and to a strategy of clause 18.01-2S to plan or regulate new uses or development of land near an existing or proposed transport route to avoid detriment to and, where possible, enhance the service, safety and amenity desirable for that route in the short and long terms.
- 48 Subsequent to the hearing, clause 18 was amended by Amendment VC204 to the Planning Scheme. In its submissions responding to the changes introduced by this Amendment, the HTV referred to the following objectives and strategies:
- Facilitating an environmentally sustainable system that is safe and supports health and wellbeing; developing safe transport infrastructure; and prioritising transport safety when designing high speed roads and intersections (clause 18.01-3S)
 - Facilitating an efficient and safe road network; and planning and developing the road network to ensure people are safe on an around roads (clause 18.02-4S)
 - Plan use and development to protect existing transport infrastructure from encroachment or detriment that would impact on the current or future function of the asset (clause 18.01-1S).
- 49 The concerns held by the HTV may be summarised as follows:
- The access is approximately 30 metres west of the left-turn slip lane at the intersection of Centre Road and Clayton Road, and the braking distance for vehicles approaching to use the slip lane, given the 60km/hr speed limit, is 64 metres. The braking distance for vehicles approaching to use the slip lane commences 34 metres before the proposed vehicle access.
 - As vehicles associated with the development would be turning left at the proposed crossover 30 metres before the slip lane, there is the potential for eastbound drivers behind to be confused whether the turning vehicle will brake and enter the development or brake to turn at the intersection. This could increase the risk of rear-end collisions.
 - The access is located some 8.0 metres from the bus stop, where up to 163 buses stop daily. When they are at the bus stop, buses will



obstruct sightlines between the approach along Centre Road and the access. Stationary buses will severely impede the sight distance of vehicles exiting the site, including of those vehicles that may wish to cross Centre Road in order to enter the right-hand turn lane at the intersection to proceed south along Clayton Road.

- At a setback of 1.0 metre from the southern boundary, the building envelope will also impede sightlines of the access for vehicles on Centre Road.

50 These concerns are not supported by the evidence, which is:

- The previously existing service station on the land would have generated a higher level of turning traffic than will be the case for the proposal and there is no demonstrated pattern of incidents at the site access (as shown by the CrashStats data).
- Due to the existence of two signalised intersections in proximity to the site, one at Centre Road/Cooke Street and one at Centre Road/Clayton Road, the movements through this part of Centre Road are relatively slow providing motorists with the opportunity to make decisions without being in a compromised position.
- The access will be left in/left out, with these movements reinforced with signs, line marking and a traffic (splitter) island.
- In instances where a bus is at the bus stop, a motorist departing from the development would be more likely to wait until the bus clears rather than entering the traffic 'blindly'.

51 The evidence is not supportive of the vehicle access being relocated to Clayton Road, with the following traffic-related observations being made:

- Vehicles entering or exiting the site may conflict with vehicles turning left into Clayton Road from the slip lane due to reduced visibility between the site access and the slip lane.
- Clayton Road is the higher order road in relation to pedestrians and it is preferable to reduce interactions in this context. Attention was drawn to the CrashStats data which included a casualty incident with a pedestrian in Clayton Road.

52 We consider that the proposed vehicle access to/from Centre Road is acceptable. Historically, a crossover has existed in this location and was used in association with the service station which previously operated on the land. Notably the crossover was used by vehicles entering the service station and there is no data to demonstrate that this was an arrangement which resulted in any casualty accidents.

53 We also accept the evidence that given the existence of two sets of traffic lights in proximity to the review site, within a distance of less than 100

metres, it is not an environment where vehicles are likely to be consistently travelling at speed. Consequently, motorists are able to respond in a timely manner to any vehicle turning into the site to avoid a collision.

- 54 While a stationary bus at the bus stop will impede sightlines for exiting drivers, we agree with the evidence that the drivers will wait until the bus has departed and sightlines are made available before departing the site and entering into Centre Road. We consider that drivers would not risk entering ‘blindly’ into traffic, particularly given the likely short duration of the bus at the stop. This would be the case for both motorists wishing to proceed east along Centre Road (or to use the slip lane to travel north along Clayton Road) and those wishing to cross lanes to enter the right-turn lane at the intersection in order to travel south along Clayton Road).
- 55 An additional consideration, unrelated to traffic, is the urban design impact of placing the vehicle access in Centre Road, where it would disrupt the active frontages of the retail premises. We agree with the evidence of the urban design and planning witnesses that this would represent an undesirable outcome. This is particularly given the vision articulated in the CACPP of a highly pedestrianised and active environment along Clayton Road, which forms the core of the activity centre.

IS SUFFICIENT CAR PARKING PROVIDED?

- 56 Applying the rates specified in clause 52.06-5, the proposal attracts a car parking requirement of 197 car spaces comprising 145 spaces for the dwellings; 22 for the office use and 30 for the shop use. It is proposed to provide 145 spaces for the dwellings; 13 for the office use and 6 for the shop use. Consequently, permission is being sought to reduce the car parking requirement by 33 spaces, comprising nine spaces for the office use and 24 for the shop use.
- 57 The evidence included a demand assessment that considered, amongst others, the likelihood of multi-purpose trips in the locality; the short-stay and long-stay car parking demand likely to be generated; the availability of public transport; and the provision of car parking.
- 58 The assessment concluded that there would be a shortfall of seven long term spaces (five for the office use and two for the shop use) and nine short-term spaces, being the customer/visitor parking or the shop use.
- 59 We accept the evidence that the long-term car parking provision is acceptable given it is associated with the staff of the shop and office uses, and is therefore conducive to modal-shift from private motor vehicle to public transport and/or bicycles. Supporting this position is the highly regulated nature of car parking within the activity centre, which is subject to time restrictions, making it unsuitable for all-day occupation by shop staff and office workers.



- 60 Survey data contained in the evidence confirmed that there is sufficient short-term car parking available on-street and in the public off-street car parking areas to accommodate the expected demand for nine customer/visitor spaces.
- 61 There is no information or evidence to the contrary and we have no basis to conclude that the proposed car parking provision is inadequate, as stated in the Council's grounds of refusal.

CONCLUSION

- 62 For the reasons given above the built form is not acceptable with respect to its impact on solar access to the public realm. We will provide the applicant with the opportunity to prepare plans (including shadow diagrams) showing modifications to the building to ensure that, at 2.00 pm on the equinox, the development will not cast shadows to within 4.0 metres of the property boundary of sites on the eastern side of Clayton Road. The plans must also incorporate the modifications to the canopy and podium indicated on the plans provided in response to the Tribunal's order dated 2 December 2021.
- 63 If the applicant does not wish to amend the design to address this matter, we will affirm the Council's decision and order that no permit be issued. Alternatively, if the applicant does wish to take the opportunity to prepare amended plans, we will issue further directions, which will include providing the opportunity for the parties to make further submissions responding to the amended plans.

Bill Sibonis
Senior Member

Ann Keddie
Member

