VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P877/2020  Permit Application no. TPA/45941/A |

|  |  |
| --- | --- |
| APPLICANT | Mr Damien Kerr |
| responsible authority | Monash City Council |
| SUBJECT LAND | 7 Edinburgh Street, Oakleigh South |
| WHERE HELD | Melbourne |
| BEFORE | Michael Nelthorpe, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 15 September 2020 |
| DATE OF ORDER | 21 September 2020 |

# Order

1. In application P877/2020 the decision of the responsible authority is affirmed.
2. Planning permit TPA/45941/A must not be amended.

|  |  |  |
| --- | --- | --- |
| **Michael Nelthorpe**  **Member** |  |  |

# Appearances

|  |  |
| --- | --- |
| For Mr Kerr | Mr Kerr in person |
| For responsible authority | Mr James Turner, Principal Planner – Appeals Advisor |



# Information

|  |  |
| --- | --- |
| Description of proposal | To amend a permit for a caretaker’s residence by converting two offices in the building into bedrooms with a waiver of one car parking space. |
| Nature of proceeding | Application under section 72 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | Industrial 1 Zone  Design and Development Overlay Schedule 1. |
| Permit requirements | Clause 31.01-1: to use land for a caretaker’s residence. |
| Relevant scheme policies and provisions | Clauses 11, 13, 15, 18, 22.03, 31.01, 52.06, 65 & 71.02. |
| Land description | This rectangular site is on the north side of Edinburgh Street in an industrial area north of Carnish Road. It has a 21.8 metre frontage, a 38.5 metre depth and an area of 839 square metres. A glazing business occupies the building on the site. |

# Remarks

1. Mr Kerr (‘the applicant’) operates a glazing business from 7 Edinburgh Street, Oakleigh South. The site has a permit for a caretaker’s residence (TPA/45941), which allows one of the building’s internal offices to be used as a bedroom. At the time that the permit was granted, a business providing 24 hour per day, 7 day per week emergency glazing repairs occupied the site.
2. Mr Kerr seeks an amendment to this permit so that two additional offices can be converted into bedrooms to provide accommodation for his family. Mr Kerr advises that he often works until 9pm and is called out occasionally at night for emergency glazing repairs.
3. The council refused to amend the permit saying, amongst other things, that Mr Kerr had not demonstrated a nexus (a legitimate connection) between his business and the expanded caretaker’s residence.
4. I made my decision and gave my reasons orally at the end of the hearing. A summary of these reasons follows.
5. I uphold the council’s position because the existing permit is intentionally restrictive. A single bedroom in this small factory unit limits the number of people living at the site. In effect, it ties the occupant of that room to the business and makes the legitimate connection required by the planning scheme. This restriction is appropriate given that the planning system prohibits any other form of accommodation in the Industrial 1 Zone.
6. The amendment that Mr Kerr proposes would alter this situation. In effect, it would become a dwelling for his family while he worked in the business.
7. The planning scheme intentionally prohibits this. Industrial areas are separated from residential areas so that the noise, smells and hazards that can occur during industrial processes are not constrained by residential standards of amenity.
8. The Industrial 1 Zone allows manufacturing businesses to operate 24 hour per day, 7 day per week without a permit. This could not occur in a residential area were low levels of noise and hazard are entrenched through community expectation and environmental legislation.

|  |  |  |
| --- | --- | --- |
| **Michael Nelthorpe**  **Member** |  |  |