VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference No. P1863/2018  application no TPA48554 |

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| APPLICANT | Eugene Kazantzis |
| responsible authority | Monash City Council |
| SUBJECT LAND | 91 Warrigal Road  HUGHESDALE VIC 3166 |
| WHERE HELD | Melbourne |
| BEFORE | E A Bensz, Member |
| HEARING TYPE | Compulsory Conference |
| date of hearing | 14 January 2019 |
| DATE OF ORDER | 15 February2019 |

# Order

1. The hearing for this matter listed for **1 March 2019** is vacated.
2. 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: | Petridis Architecst |
| * Drawing numbers: | TPA01 – TPA16 inc. |
| * Dated: | 14 December 2018 |

1. The decision of the Responsible Authority is set aside.

4 In permit application TPA 48554 a permit is granted and directed to be issued for the land at 91 Warrigal Road, Hughesdale in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

* The construction of a four storey residential apartment building and alteration of access to a Road Zone Category 1 in a Commercial 1 Zone

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| **E A Bensz**  **Member** |  |  |

**remarks**

1 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.

2 The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:

1. the responsible authority is of the opinion that the permit or amended 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*;
2. 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.

3 Based on the information available to the Tribunal, I consider it is appropriate to make these orders

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| **E A Bensz**  **Member** |  |  |

# Appearances

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| For applicant | Mr Russell Hocking, town planner |
| For responsible authority | Ms Ann Marie Roberts, town planner |



# APPENDIX A

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| **PERMIT APPLICATION NO:** | TPA 48554 |
| **LAND:** | 91 Warrigal Road, HUGHESDALE |
| **WHAT THE PERMIT ALLOWS:** | |
| * The construction of a four storey residential apartment building and alteration of access to Road Zone category 1 in a Commercial 1 Zone   in accordance with the endorsed plans. | |

# Conditions:

1. Before the development starts, three copies of 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 prepared by Petridis Architects dated 14 December 2018 being Plan Reference Job No. 17-119, TP01-TP10, but further modified to show”
   1. The car parking area along the northern boundary to be fully enclosed.
   2. Details of screening to be provided to the open car stacker facing the ground floor bedroom windows of Dwelling 1.
   3. Deletion of the paving/stepping stones in the rear setback area leading to the door on the western elevation and the area dedicated as a vehicle passing area.
   4. The provision of bicycle spaces in accordance with Clause 52.34 of the Monash Planning Scheme.
   5. Details of treatment for the south facing glazed wall to the foyer at first, second and third floor levels in accordance with standard B22 of clause 55.04-5.
   6. Provision of mailboxes at the Warrigal Road entrance to the development.
   7. Not less than three (3) visitor car parking spaces to be provided and clearly marked as ‘visitor spaces’ within the basement.
   8. The location and design of any required fire services, electricity supply, gas and water meter boxes discreetly located and/or screened to compliment the development.
2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. Prior to the commencement of any works, use and development (other than demolition and other site works associated with site remediation) and for the usage of the land to be changed for a sensitive use (Residential) permitted by this permit for the land, the applicant must provide to the responsible authority either:
   1. A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970; or
   2. An auditor approved under the Environment Protection Act 1970 must make a Statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.

Three copies of the Certificate of Environmental Audit or the Statement of Environmental Audit and the audit area plan must be submitted to the responsible authority.

1. The development and/or use allowed by this permit must strictly comply with the directions and conditions of the Environment Protection Act 1970 and also with the conditions on the Certificate or Statement of Environmental Audit.
2. If the audit referred to within this permit identifies or discloses contamination which would affect the use of the land as residential, a Section 173 Agreement under the Planning and Environment Act 1987 may need to be entered into with the responsible authority to require remediation of the land to a suitable standard to allow residential use as contemplated by the permit.  Any Agreement must be approved by the responsible authority prior to the commencement of any works, use and development and may require further assessment of the land.
3. Prior to the use of the land permitted by this permit, issue of a Certificate of Occupancy under the Building Act 1993 and certification/issue of a statement of compliance under the Subdivision Act 1988 a letter must be submitted to Council prepared by an Environmental Auditor approved by the Environment Protection Authority under the Environment Protection Act 1970 to verify that the conditions of the Statement of Environmental Audit issued for the land have been satisfied.

A copy of the certificate or statement of Environmental Audit issued for the land must be provided to each owner, under a covering letter which draws attention to any conditions or directions on the Certificate or Statement of Environmental Audit.

The land owner and all its successors in title or transferees must upon release for private sale of each of the lots created (if any) by the subdivision include in the Vendor’s Statement pursuant to Section 32 of the Sale of Land Act 1962 annexed to the Contract of Sale for the sale of the land, a copy of the planning permit and relevant plans, Certificate or Statement of Environmental Audit for the land and any management plans or other documentation required to be prepared and adhered to in respect of the land.

1. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
2. 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 by 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 the Responsible Authority. Once approved the Waste Management Plan will be endorsed to form part of the permit.

1. 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.
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. 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.
4. 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 major open space areas of 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;

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. 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. Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) both sides or 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.
2. Car stacker modules are required to cater for the following:
   1. Independent operation for each parking space.
   2. A minimum entry level headroom clearance of 1.8 metres.
   3. A vehicle at least 150cm height on the upper level.
   4. A clear/usable platform width of at least 230cm.
   5. Minimum pit length of 520cm.
   6. Loading weight per platform of at least 2000kg.

Plans for the car stacker detail design and associated features are required to the satisfaction of the Responsible Authority.

1. The mechanical car stackers are to be maintained in a good working order and be permanently available for the parking of vehicles in accordance with their purpose, to the satisfaction of the Responsible Authority.
2. Bicycle parking facilities shall generally follow the design and signage requirements set out in Clause 52.34 of the Monash Planning Scheme.
3. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties. The private on-site drainage system must prevent discharge from the driveway onto the Right of Way. Such a system may include either:
   1. A trench grate (150 mm minimum internal width) located within the property boundary and not the back footpath; 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.
4. The nominated point of stormwater connection for the site is to the north-west of the property where the entire site's stormwater must be collected and free drained via a pipe to the 225 mm Council drain in the right of way via a 900 mm x 600 mm junction pit to be constructed to Council Standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

### **VicRoads Condition**

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 (RA) and at no cost to VicRoads or the RA.
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 -**