

DVICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P729/2022
PERMIT APPLICATION NO.TPA/53095

CATCHWORDS

APPLICANT	1041 Centre Road Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENT	Nerida Marcos
SUBJECT LAND	1041 Centre Road OAKLEIGH SOUTH VIC 3167
HEARING TYPE	Hearing
DATE OF HEARING	17 November 2022
DATE OF ORDER	22 December 2022
CITATION	1041 Centre Road Pty Ltd v Monash CC [2022] VCAT 1464

ORDER

- 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: i2C Ryder
 - Drawing numbers: Project 2020-506 Revision DA02 TP3, DA12 TP4, DA13 TP4, DA 30 TP5, DA31 TP5, DA32 TP6, DA34 TP6, DA37 TP6, DA38 TP6, DA40 TP4, DA41 TP4, DA50 TP3, DA51 TP3, DA62 TP3, DA66 TP0, DA67 TP0, DA69 TP0, DA77-TP0, DA81 TP2, DA82 TP3
 - Dated 11 October 2022
- In application P729/2022 the decision of the responsible authority is set aside.
- In planning permit application TPA/53095 a permit is granted and directed to be issued for the land at 1041 Centre Road Oakleigh South VIC 3167 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:



- Construction of a multi-storey building to be used for accommodation, food and drinks premises, supermarket and shop, display of signage, reduction in car parking requirements and alteration of access to a road in a Transport Zone 2

Jane Tait
Member



APPEARANCES

For 1041 Centre Road Pty
Ltd

Peter O'Farrell SC, Tom Ellicott JC,
instructed by David Passarella from Colin
Biggers and Paisley. They called the following
witnesses:

- Colleen Peterson, town planner for
Ratio
- Mark Sheppard, urban designer for
Kinetica
- Valantine Gnanakone, traffic
engineer for One Mile Grid

Landscape evidence from Stephen Schutt from
Hansen Partnership was tabled. This evidence
was not contested by Council.

For Monash City Council

Jeremy Wilson, Maddocks

For Department of Transport

No appearance

For Nerida Marcos

No appearance

INFORMATION

Description of proposal

Use and development of a six and seven storey
mixed use development with two levels of
basement car parking. The ground floor
comprises a supermarket, shops, and food and
drinks premises. The upper levels contain 171
dwellings with communal open space at Level
1 and shared facilities at the top level.

The building has a maximum height of 24.2
metres.

The application includes signage associated
with the ground floor supermarket, shops, and
accommodation.

Nature of proceeding

Application under section 77 of the *Planning
and Environment Act 1987* – to review the
refusal to grant a permit.

Planning scheme

Monash Planning Scheme



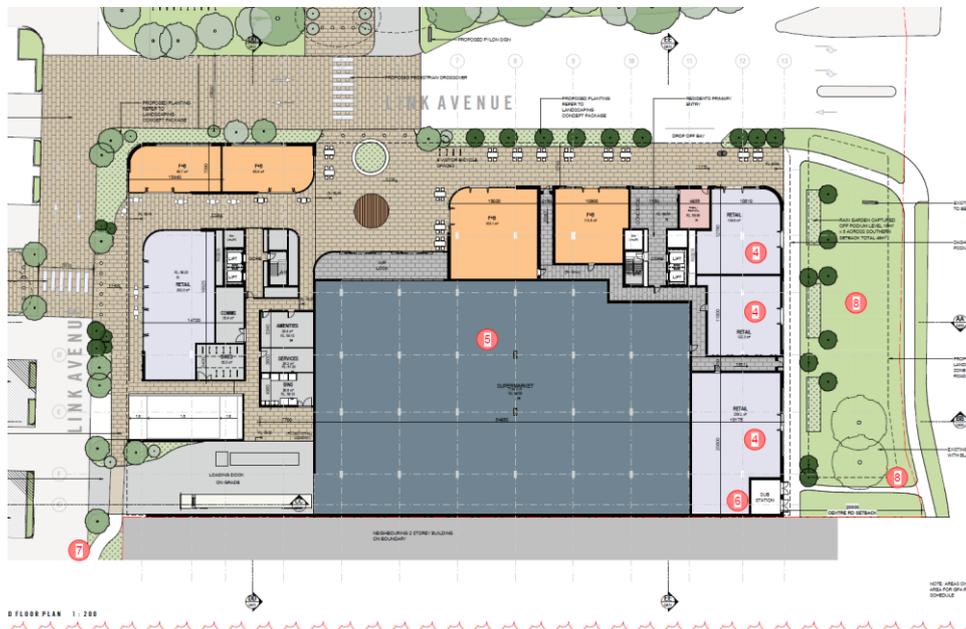
Zone and overlays	Commercial 1 Zone (C1Z) Design and Development Overlay – Schedule 1 (DDO1)
Permit requirements	<p>Clause 34.01-1 – Use as accommodation (dwelling)</p> <p>Clause 34.01-4 – To construct a building or construct or carry out works</p> <p>Clause 43.02-2 – To construct a building or construct or carry out works</p> <p>Clause 52.05-11 – To construct and display a sign in Section 2.</p> <p>Clause 52.06-5 – To reduce the number of car spaces required under Clause 52.06.</p> <p>Clause 52.27 – To create or alter access to a road in a Transport Zone 2</p>
Land description	<p>The subject site is located on the north side of Centre Road, approximately 185 metres east of Warrigal Road, Oakleigh South. The development site is in the south-east corner of a larger ‘L’ shaped lot known as the Links Shopping Centre that has a total area of 6.01 hectares. This lot also has frontage to Warrigal Road and contains several retail premises including a supermarket, specialty shops and hardware store.</p> <p>The development site faces Centre Road and contains a two storey warehouse of approximately 3000 square metres. The site also abuts Links Avenue that connects the car park for the Links Shopping Centre with Warrigal and Centre Roads.</p> <p>The site abuts a petrol station and bus depot to the west and Stan Riley Reserve to the east. Residential properties are on the south side of Centre Road.</p>
Tribunal inspection	An unaccompanied site inspection was conducted prior to the hearing.

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 1041 Centre Road Pty Ltd (the ‘applicant’) is seeking a review of Monash City Council’s (the ‘Council’) decision to refuse an application for construction of a multi-storey building to be used for accommodation, food and drinks premises, supermarket and shop, display of signage, reduction in car parking requirements and alteration of access to a road in a Transport Zone 2 at 1041 Centre Road, Oakleigh South.
- 2 The application proposes two levels of basement car parking containing 177 car spaces and 214 of bicycle spaces. The ground level contains a supermarket and shops and the upper 5-6 levels contain 171 apartments with associated communal areas and roof top amenities. The development also includes construction of a new car park containing 60 spaces on the east side of Links Avenue and Centre Road.
- 3 The six to seven storey building proposes a maximum height of approximately 24.2 metres to the parapet.
- 4 The application includes business identification signs (some internally illuminated) for the shops, supermarket, and accommodation. The applicant says this development is a ‘rent to build’ model that provides purpose designed and managed rental accommodation.

Figure 1 – Ground Floor Plan²



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 DA32 TP6.

Figure 2 – Level 1 Floor Plan³



Figure 3 – East and North Elevations⁴



- 5 Council refused the application on nine grounds relating to the excessive height and massing of the development which will result in a poor design outcome. It argues the development is inconsistent with the built form objectives, policy, and decision guidelines of Clauses 22.03, 34.01-8 and 58 and decision guidelines of Design and Development Overlay Schedule 1 (DDO1). Other grounds included that the proposal would have a poor level

³ DA33 TP6.

⁴ DA42 TP4.

of internal amenity for future residents, there is inadequate pedestrian links and landscaping outcomes.

- 6 The respondent is a resident who lives on the south side of Centre Road. She, and the other nearby residents who lodged statements of grounds, are concerned about the excessive scale and density of the development. They say it is an unattractive development that is inappropriately located next to a service station. They say the proposal will increase traffic in the area and there is inadequate car parking provided on-site.
- 7 The applicant argues the subject site is part of an activity centre and the proposal will contribute to a vibrant convenience centre supporting a 20-minute neighbourhood. It acknowledges there will be a change from the existing built form of the locality, but this is consistent with strategic planning policy that directs housing growth to activity centres. It says this proposal will positively contribute to the evolution of the Neighbourhood Activity Centre (NAC).
- 8 The applicant relies on the evidence of Ms Peterson who considers that the proposal is an appropriate planning outcome. She says there is policy support for redevelopment for retail and high density dwellings in this activity centre and this will increase variation and housing choice in the area. She says the layout of the apartments will provide a high level of internal amenity, in accordance with Clause 58, and there will be minimal external amenity impacts.
- 9 The applicant also relies on the evidence of Mr Sheppard who says the proposal will contribute to the transformation of this area into a vibrant, pedestrian orientated activity centre. He considers the scale and massing of the building strikes an appropriate balance between providing for growth and avoiding unreasonable impacts on surrounding land.

WHAT ARE THE KEY ISSUES?

- 10 I find the key issues in this matter are:
 - Does the proposal respond to its zoning and policy context?
 - Is the design, setbacks and built form appropriate to the site's context?
 - Does the development provide appropriate pedestrian linkages and amenity to pedestrian areas?
 - Does the proposal provide an acceptable level of internal amenity for future residents?
 - Is the provision of landscaping acceptable?
 - Is the provision of car parking and traffic impacts acceptable?
 - Are the proposed signs acceptable?



- 11 Planning does not seek ideal outcomes, or outcomes which respond positively to every relevant policy. Rather, acceptable outcomes are the measure by which planning decisions are to be made. I must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the Scheme. Clause 71.02-3 requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.
- 12 Having undertaken an inspection of the abutting properties and wider area, and taking into consideration the submissions and evidence, I have decided to set aside Council's decision and direct that a permit be granted as I find the proposal responds positively to the policy and physical context. I consider the height and massing of the building is an acceptable built form response in this NAC. I also find the design and layout of the building and its pedestrian connections will provide an acceptable level of amenity for future residents and there will be no unacceptable traffic impacts in the wider area. My reasons follow.

PROCEDURAL ISSUES & RULINGS

- 13 Prior to the hearing, amended plans were prepared by the applicant and notice of these was given in accordance with Tribunal Practice Note PNPE9. Amendments to the plans include an overall reduction in height from nine to six and seven storeys, a reduction in height of the ground to podium level and floor-to-ceiling heights of the dwellings, removal of studio dwellings and inclusion of three bedroom dwellings, relocation of retail tenancies to face Centre Road, repositioning of the supermarket, provision of communal facilities at Level 6, redesign of the basement, additional landscaping in Centre Road, upgraded paths and revised elevation treatments.
- 14 The applicant also submitted an updated town planning report, wind assessment and traffic impact assessment with the amended proposal.
- 15 As there was no objection by the parties, I substituted these plans for the planning permit application plans. Council revised their grounds of refusal to delete the ground relating to failing to meet the objectives of Clause 58.07-1 (Functional Layout).

WHAT IS THE SITE CONTEXT?

- 16 The subject site is within the Oakleigh South NAC. It is in the south-west corner of the municipality, opposite Kingston City Council to the south and Glen Eira City Council to the west. The NAC currently contains a mix of commercial and industrial buildings, large format retailing, small scale retail, petrol station, fast food outlets, gym, and bus depot.

- 17 The development site that is subject of this application is in the south-east corner of the larger site and has an area of approximately 5000 square metres. It is occupied by a warehouse that is set back approximately 20 metres from Centre Road. Vehicle access is from Links Avenue, which abuts the east boundary. There is a recently constructed three storey office building in the south-west corner of the larger site, with frontage to Warrigal Road. The remaining of the buildings in the NAC are 1-2 storey. The subject site and immediate interfaces are shown in Figure 4.

Figure 4 – Aerial Photograph⁵



Subject Site

- 18 To the immediate north of Links Avenue is the car park associated with the supermarket, shops, and hardware store. This private road extends westward to connect with Warrigal Road. Further north are residential properties with frontage to Pitt Street and to the east of Links Avenue is Stan Riley Reserve. This reserve contains Oakleigh BMX track and associated car parking that has access to Centre Road. Further east is an aged care facility that is on the corner of Cameron Avenue.
- 19 To the south of Centre Road are single and two storey detached dwellings that are within the General Residential Zone – Schedule 3 (GRZ3).
- 20 Mr Sheppard says the area is in transition from a ‘*collection of disparate commercial and light industrial uses*’⁶ towards a genuine activity centre with the recent development of the full line supermarket, related convenience stores and the Links offices. Ms Peterson agrees and considers the Oakleigh South NAC to be an evolving centre that is an excellent candidate for urban renewal and consolidation.⁷

⁵ Nearmap, 14 September 2022.

⁶ At [10].

⁷ At [114].

- 21 Council disagrees with this assessment and says this NAC has experienced very limited development in the past decade and has a prevailing height of one-two storeys.
- 22 I agree with Mr Sheppard and Ms Peterson that this area has commenced its transformation from a light industrial/commercial area to fully fledged NAC. I find the recent development of the supermarket, offices, shops, and hardware store reflect the strategic focus to support redevelopment for retail and higher density dwellings in this centre. Whilst the existing maximum height is three storeys (i.e. Links offices), this should not dictate the future development potential for the centre. I will further policy implications further below.

WHAT IS THE RELEVANT ZONING AND POLICY CONTEXT?

- 23 The subject site is within a Commercial 1 Zone (C1Z) that abuts GRZ2 to the north and east. Relevantly, the purpose of this zone is to create vibrant mixed use commercial centres for retail, office, business, entertainment, and community uses. It also seeks to *‘provide for residential uses as densities complementary to the role and scale of the commercial centre.’*⁸
- 24 The site is also within a DDO1 which relates to Industrial and Commercial Design and Development. Some of the design objectives include:
- To ensure that development, including front setbacks, is in keeping with and contributes to the Garden City Character as set out in the Municipal Strategic Statement.
 - To ensure that the building scale and form in terms of height and bulk complements and does not visually overwhelm surrounding buildings.
- 25 Relevant objectives and strategies in the Planning Policy Framework (PPF) are found at Clauses 11⁹, 15¹⁰, 16¹¹ and 18¹². These clauses provide guidance about the type, location, and anticipated density of new housing in the municipality. This includes Plan Melbourne 2017-2050 which is the central policy platform of the PPF that has an emphasis on delivering housing at densities that make local services and public transport viable and increasing housing in key areas in and around activity centres.
- 26 Relevant clauses in the PPF include:
- Clause 11.03-1S (Activity Centres) which seeks to ‘encourage the concentration of major retail, residential, commercial, administrative,

⁸ At Clause 34.01.

⁹ At Clause 11.03-1S (Activity Centres).

¹⁰ At Clauses 15.01-1S (Urban Design), 15.01-2S (Urban Design) and 15.01-5S (Neighbourhood Character).

¹¹ At Clauses 16.01-1S (Housing Supply) and 16.01-2S (Housing Affordability).

¹² At Clauses 18.01-1S (Land use and transport integration), 18.01-2S (Transport system), 18.01-3S (Sustainable personal transport), 18.02-1S (Walking), 18.02-2S (Cycling), 18.02-3S (Public Transport) and 18.02-3R (Principal Public Transport Network).



entertainment and cultural developments into activity centres that are highly accessible to the community’. Strategies to achieve this include ‘encourage a diversity of housing types at higher densities in and around activity centres’.

- Clause 15.01-2S (Urban Design) - which seeks to ‘create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity’.
- Clause 15.02-1S (Energy and Resource Efficiency) - To encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions.
- Clause 15.01-2S (Building Design), which seeks to ‘achieve building design outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development’.
- Clause 15.01-4S (Healthy Neighbourhoods) which have an objective to achieve neighbourhoods that foster health and active living and community wellbeing.
- Clause 15.01-5S (Neighbourhood Character), which seeks to ‘recognise, support and protect neighbourhood character, cultural identity and sense of place.’ Strategies to achieve this include supporting developments that respect the existing neighbourhood character or contributes to a preferred neighbourhood character’ and ‘ensure the preferred neighbourhood character is consistent with medium and higher density housing outcomes in areas identified for increased housing’.
- Clause 16.01-1S (Housing supply) which seeks ‘to facilitate well located, integrated and diverse housing that meets community needs.’
- Clause 16.01-2S (Housing affordability) that sees to deliver more affordable housing closer to jobs, transport, and services.
- Clause 17.01-1S (Business).
- Clause 18.02-2R – (Principal Public Transport Network).
- Clause 18.02-4S – (Car parking).

27 The Local Planning Policy Framework (LPPF) reiterates the objectives of the PPF by establishing a hierarchy of activity centres within the municipality. Clause 21.04 (Residential Development) establishes a residential framework plan with eight categories. The subject site is in Category 1: Activity and neighbourhood centres which is identified as having future development potential.

28 Some of the relevant objectives at Clause 21.04-3 are:



- To locate residential growth within neighbourhood and activity centres.
 - To assist in the provision of social and affordable housing.
 - To encourage a high standard of architectural design in buildings and landscaping associated with residential development that takes into account environmentally sustainable development.
 - To encourage the provision of a variety of housing types and sizes that will accommodate a diversity of future housing needs and preferences that complement and enhance the garden city character of the city.
- 29 Strategies to achieve these objectives include to direct more intensive, higher scale development to neighbourhood and activity centres that are well serviced by public transport, commercial, recreational, community and educational facilities.
- 30 Clause 21.06 relates to Major Activity and Neighbourhood Centres. Table 1 – Hierarchy of Activity Centres in Monash, nominates Oakleigh South as a Neighbourhood Centre that has primary focus for weekly convenience shopping and should be accessible by local public transport lines to a Major Activity Centre (MAC).
- 31 Clause 22.03 (Industry and Business Development and Character Policy) is applicable as the site in a C1Z. Whilst the policy requires development to satisfy the intent of the designed future character statement, the subject site is not in a nominated business character area.
- 32 The application includes advertising signs and Clause 22.08 (Outdoor Advertising Policy) is applicable. The subject site falls within the ‘Other Business and Industrial Areas’ category that has an objective to *‘promote the orderly display of signs having regard to the need for identification of business premises and respect for environmental context.’*
- 33 Other relevant documents include the Monash Housing Strategy 2014 which is a background document in Clause 21.04-4. This strategy identifies preferred locations for increased housing intensity and to protect the character of neighbourhoods based on an identified future character.

Policy arguments

- 34 Council argues that whilst planning policy supports urban renewal and consolidation in activity centres, it should not be seen as a green light for development at any cost. It submits that more intensive development should not override other considerations such as respecting the site context and achieving good urban design outcomes.
- 35 Council submits Clause 21.06 and Clause 22.03 seek to maintain and promote the hierarchy of activity centres to provide a framework for

planning in the area for growth and change in the next 30 years. It argues the local policy seeks to encourage development within NACs to be moderately higher than surrounding residential areas, which is consistent with the Housing Strategy. This strategy recognises potential for lower density mixed use and lower rise apartment developments in NACs. Council submits that it is clear from the hierarchy that development with the Oakleigh South NAC should be of a lesser intensity compared to higher order centres, such as Oakleigh MAC that has a recommended height of 4-8 storeys.

- 36 Council says the proposal places too much weight on achievement of urban consolidation and increased housing choice and affordability to justify the proposed built form. It submits this is contrary to the purpose of the C1Z that seeks to provide densities complementary to the scale of the commercial centre.
- 37 The respondent agrees with Council and says the scale of the development is inappropriate at this location.
- 38 The applicant argues there is strong policy support for Clauses 11.03-1S (Activity Centres), 16.01-1S (Housing Supply) and 21.04 (Residential Development) for increased dwelling diversity. It says these policies place strategic emphasis on directing housing growth to activity centres. Therefore, significant change can be expected in Oakleigh South NAC relative to surrounding areas. It says the build to rent model underpinning the proposal also has policy support under Clause 16.01-2S (Housing Affordability).
- 39 The applicant submits the proposal will be an important contribution to its transition to a vibrant convenience centre which supports a 20-minute neighbourhood. Ms Peterson and Mr Sheppard agree and consider the subject site has the capacity to support more intensive development within this evolving centre. Ms Peterson says additional commercial facilities within the C1Z are consistent with the objectives of Clause 17.02-1S (Business). Both witnesses note the subject site is accessible by public transport (i.e. buses) that provide connections to both Oakleigh and Clayton MAC. Mr Sheppard says that policy clearly supports change to the character of the activity centre to accommodate growth and diversification.

Policy findings

- 40 The PPF encourages activity centres as a focus for more intensive development, including higher density residential uses. I am satisfied the proposal is consistent with the purposes of the C1Z and the strategic direction of the Planning Scheme for the following reasons:
- It is in accordance with Clauses 11.03-1 (Activity Centres) as it will provide commercial and residential development in an activity centre;

- It facilitates commercial development in an activity centre in accordance with the objectives of Clause 17.02-1S (Business);
- The subject site abuts a main road that contains bus services that connect to the Oakleigh and Clayton MACs. This is consistent with the strategic direction of Clause 21.06-3 (Major and Neighbourhood Activity Centres);
- The development will increase housing supply in accordance with the objectives in Clause 16.01-1S (Housing Supply – Metropolitan Melbourne);
- The development will provide a mix of dwelling types including 102 one-bedroom and 63 two bedroom dwellings. This will facilitate a diversity of housing types that is encouraged in Clause 16.01-1S (Housing Supply – Metropolitan Melbourne);
- The site is within a NAC which is identified as an area for increased dwelling diversity outlined in the objectives of Clause 21.04-3. This clause encourages provision for a variety of housing types and sizes;
- It will provide convenience retailing that will provide additional choice in this emerging NAC;

- 41 The main issue is whether the intensity of development will undermine the classification of the subject site as part of the NAC as specified in Clauses 21.04, 21.06 and 22.03.
- 42 I am not persuaded by Council’s arguments and find that activity centre policy at both State and local level does not restrict development to a lesser height than other activity centres. Whilst there is some height guidance provided for the Oakleigh MAC, I accept the applicant’s argument that this is due to the fine grain context of this centre.
- 43 Clause 21.06-3 has an objective to promote and facilitate the hierarchy of activity and neighbourhood centres as the most efficient and equitable framework to provide the range of civic, retail, recreational, residential, entertainment, health, educational, restaurant and other service requirements of the community. Whilst the clause contains an objective to promote high rise residential development in the Glen Waverley and Oakleigh MACs, there is no specific discouragement of lower rise residential developments in NACs.
- 44 The applicant referred me to two previous Tribunal decisions that discussed the implications of built form outcomes of land within a NAC.¹³ I agree with these findings that policy does not require a graduation in heights, depending on the position in the centre hierarchy. I consider activity centre

¹³ *Peter Gibson Developments Pty Ltd v Stonnington CC* [2011] VCAT 1007 and *Bensons Property Group Pty Ltd v Stonnington CC* [2014] VCAT 83.



the policy is a guide to discretion that encourages all activity centres to play a significant role in the provision of new housing at increased densities provided it responds to its context. I will address how this proposal responds to the context of this NAC further below.

- 45 The applicant emphasised the benefits of the rent to build model as supporting housing affordability objectives in Clause 16.01-2S. Ms Peterson considers this form of housing provides flexible and longer term rental tenure and communal facilities within the development for residents.
- 46 Whilst the proposal is offering a point of difference in the housing market, I have given this model no weight in my decision as the Planning Scheme does not differentiate between different forms of housing tenure. However, I acknowledge the proposal expands housing choices as it contains a high proportion of smaller dwellings that may be more affordable than the existing housing stock in the municipality.

IS THE DESIGN, SETBACKS AND BUILT FORM APPROPRIATE TO THE SITE'S CONTEXT?

- 47 The development proposes a maximum of seven storeys with an overall height of 24.3 metres.
- 48 The DDO1 contains a design objective to ensure that building scale and form, in terms of height and bulk, complements and does not visually overwhelm surrounding buildings. It does not contain a mandatory height requirement but requires buildings to be set back from residential areas, relative to the height of the building. Given the large setbacks from dwellings to the south and east, the proposal meets this requirement.
- 49 General policies in the PPF, such as Clause 15.01-2S (Building Design), seek to ensure new developments respond and contribute to the strategic and cultural context of its location.
- 50 The local policy at Clause 21.06 contains a strategic direction for built form in a NAC to:
- Encourage development with the Centre that is of a moderately higher scale than surrounding residential areas.
 - Ensure ongoing development does not impact on the adjacent residential areas.
- 51 Clause 22.03 does not have a preferred character classification for the Oakleigh South NAC but contains general policies for building height including:
- Development complements and does not visually overwhelm surrounding buildings, roads, or spaces in terms of building scale, height and bulk.
 - Development conforms with the scale and high quality design suitable for the locality.

Parties' arguments

- 52 Council argues the massing, height, and bulk will result in an overbearing built form that fails to respond to policies at Clause 21.04, 21.06 and 22.03 of the Planning Scheme. It says the proposal does not respond to the context of this NAC as it will be one of the tallest and largest building in the south-west corner of the municipality. It submits that if approved, it may encourage extensive redevelopment of the balance of the subject site and the adjoining bus depot which will transform the role of the NAC and undermine activity centre policy.
- 53 The respondent considers the proposal is a monolithic building and there are no other high rise buildings in the local area.
- 54 The applicant argues that a six to seven storey building cannot be reasonably described as tall or high rise but low rise, or at the low end of medium rise in NACs in the municipality. It submits the proposal will change the built form of the locality relative to surrounding areas, but this should be expected given the strategic planning policy for activity centres. It says this height is consistent with developments approved in similar contexts and is encouraged in the policy framework. It submits the proposal delivers on the DDO outcomes sought by the Planning Scheme which does not include a height control.
- 55 The applicant, Ms Peterson and Mr Sheppard provided an extensive list of similar height and scale developments in NACs throughout the municipality. Council argues these have little relevance to the current application as they are subject to a different site and policy context. It submits that a more nuanced and informed approach to context is required rather than simply pointing to a building nearby.
- 56 Mr Sheppard agrees that there is little about the existing character of the centre that warrants tempering intensification of development on the subject site. He says the proposal is a well-mannered urban form that responds to policy to promote growth in the activity centre. He considers the lowering of the building height to a maximum of seven storeys, stepping down to six storeys, will ensure the proposal does not visually overwhelm surrounding buildings.
- 57 Ms Peterson agrees and considers the site has the capacity to comfortably accommodate a larger scale building due to its size and generous separation from dwellings and residentially zoned land.

Tribunal findings

- 58 I have already made findings regarding how activity centre policy does not require a graduation in heights, depending on the site's position in the centre hierarchy specified in Clause 21.06.

- 59 I am satisfied the height and scale of the building will not visually overwhelm the surrounding area for the following reasons:
- The building is located on a large 6.09 hectare site that abuts three street frontages. A site of this size provides the potential to accommodate a building with additional height;
 - The abutting interfaces are not sensitive, and the building is setback over 47 metres from the nearest residential property to the south of Centre Road;
 - The height complies with the setback requirements of the DDO1; and
 - The height and scale of the building steps down to six storey facing Centre Road.
- 60 Ms Peterson and Mr Shepperd identified several similar height developments approved in surrounding NACs in the municipality. I am familiar with several of these developments. Whilst I acknowledge Council's concern about the different site and policy context, they indicate that similar height developments have been approved in NACs that have not undermined their role in the activity centre hierarchy.

Interfaces

- 61 Council argues the proposal fails to appropriately respond to the interfaces of the subject site. My findings will examine each interface.

Centre Road

- 62 Council submits the tower element to Centre Road, that is setback 1.88 metres from the podium does not provide a clear demarcation between the two forms. It says the proposal will create an overbearing appearance due to its six storeys and 21.24 metre height. It says the significant setbacks to residential land to the south exposes the development to expansive views along Centre Road.
- 63 Council is also concerned that the visual dominance is exacerbated by the width of the south elevation (i.e. 48.6 metres). It says the design response is unsuccessful as the recesses are relatively narrow and insufficient to deconstruct the building mass. Council considers the framed models do not respond to the rhythm and spacing of buildings in the area. It says the architectural design requires further refinement as there are large sections of blank wall in the podium.

Figure 5 – South Elevation



64 The applicant relies on the evidence of Mr Shepperd who considers the proposal appropriate as it steps down to six storeys at its southern edge which provides a transition in building scale.

Tribunal findings

- 65 I do not share Council's concerns about the scale and design of the south elevation. I find the stepping down of the built form from seven to six storeys, coupled with the 20 metre frontage setback, an appropriate response that will ensure the built form will not overwhelm this road.
- 66 I am also satisfied the façade design, that includes a 1.88 metre setback of the podium from the tower element, an acceptable means of articulation of the built form. This measure, in combination with the framing elements and range of materials, will provide visual interest in the streetscape. I find the recesses between the modules, that are constructed with darker materials and glazing, will further break up the expanse of this elevation in Centre Road.
- 67 I agree with Mr Shepperd's suggestion that further refinements to the materials could be made to emphasise the modulation more strongly. This was reflected in the amended plans at Appendix D of his evidence. I will include these changes as a condition on the permit.
- 68 I note that Mr Sheppard has suggested a change in the materials of the blank band of concrete above the podium to ribbed concrete. I consider this amendment will provide further articulation of this element in the streetscape which will also be softened by the landscaping spilling over the wall, which is shown on the landscape plan.

Western Interface

69 Council concedes the amended plans are a better response to the western interface from an equitable development viewpoint. However, it still has concerns about the overall mass and whether it will provide a suitable

transition to the bus depot, should it be redeveloped in the future. It says the two wings are poorly resolved sideages.

Figure 6 – West Elevation



70 Mr Sheppard considers the siting of the walls away from the west boundary minimises the potential impact on the future development potential of the bus depot.

Tribunal findings

71 I find this proposal has acknowledged the future development potential of the adjoining bus depot due to the recessing of the ‘U’ shaped configuration of the upper levels and stepping back of the built form from the west boundary.

72 Whilst two blank walls of the tower will be visible in the streetscape, I support Mr Sheppard’s suggestion for the application of a light coloured finish and artwork on these panels. This measure will provide some visual interest in the walls prior to the redevelopment of the bus depot in the future.

Eastern Interface

73 Council says the 93 metre long tower element in the east elevation will present significant visual bulk to the eastern leg of Link Avenue and create a sense of enclosure. It says that due to the spacing created by this road and the Stan Riley Reserve and BMX track, the development will be exposed to views from the south-east and east, as shown in Figure 7.

Figure 7 - 3D rendered illustrative view from Centre Road facing north to subject site¹⁴



¹⁴ Mr Sheppard’s evidence – page 32.

Tribunal findings

- 74 The amendments to the plans push the building mass closer to the parkland and BMX facility.
- 75 Whilst I acknowledge there will be a high degree of visibility of building, I find the architectural treatment, recessing of the built form, framing elements, varied materials, and range of colours of the tower above the podium will provide a high degree of visual interest on this corner.
- 76 I consider the setback of the subject site approximately 42.5 metres from the BMX facility will ensure the built form will not dominate this interface. This intervening space is occupied by the proposed car park and landscaping that will also filter views to the east. I also note the building will be facing the car park associated with the BMX track which sits higher than the subject site.

Northern Interface

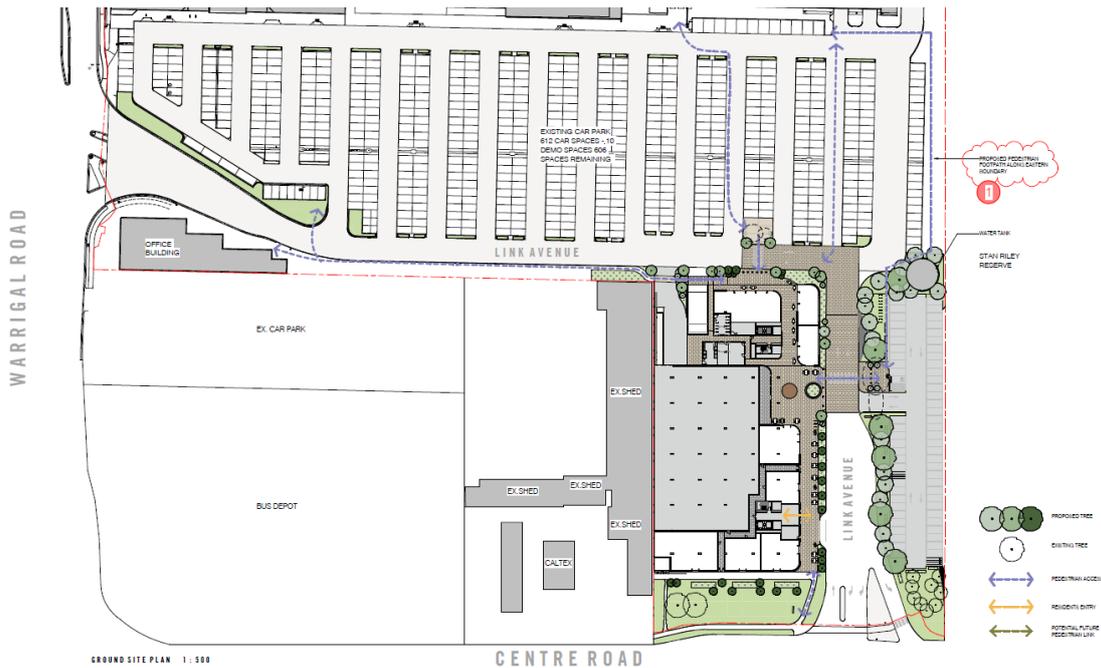
- 77 Council argues this interface plays a critical role in integrating the proposal with the existing Links Shopping Centre on the subject site. It concedes the north elevation provides active street frontages and opportunities for passive surveillance, but the height and scale of the north elevation does not relate to the balance of the subject site.
- 78 The design, materials and recessing of this elevation is consistent with the east elevation. Therefore, I find this elevation provides a suitable interface with the car park associated with the existing Links Shopping Centre.

DOES THE PROPOSAL PROVIDE APPROPRIATE PEDESTRIAN LINKAGES AND AMENITY TO PEDESTRIAN AREAS?

- 79 The PPF and LPPF encourage enhanced pedestrian connectivity, particularly in activity centres. The *Urban Design Guidelines for Victoria* (the 'UDGV') discuss the importance of pedestrian access in activity centres. The UDGV recommends the structure of activity centres should allow for more intense development, street frontage exposure for display and pedestrian access to facilities.
- 80 The application proposes a plaza area that includes pedestrian footpaths along the west and south side of Link Avenue and along the frontages of the development site. The path on the south side of Link Avenue will form a continuation of the existing path connecting to Warrigal Road, whilst the southern path will connect to Centre Road. It is also proposed to construct pedestrian crossings across Link Avenue, including between the proposed building and car park to the east, and between the proposed building and existing car park to the north. A pedestrian meeting point is proposed at the north of the northern car park crossing which will require the removal of six spaces from the existing car park. These paths are shown on Figure 8.



Figure 8 – Proposed Site Plan¹⁵



81 Council has concerns:

- the proposed pedestrian links may not achieve satisfactory wind conditions;
- there is a lack of a protected footpath through the existing car park to provide connection with the Links Shopping Centre;
- the proposed path along the east boundary is inconvenient and unattractive; and
- there will be conflict between pedestrians and vehicles.

Wind

82 Council argues the tall building will result in unacceptable wind conditions and result in an unpleasant environment for pedestrians and users of the outdoor dining areas.

83 Prior to the hearing the applicant tabled wind speed measurements on a wind tunnel model of the Links Development.¹⁶ This report simulated an upstream layout of the nature of wind to determine the likely environmental conditions. The report concludes the wind conditions for the configuration in the streetscape that surround the development pass the comfort criterion suitable for their intended use. It also says the development passed the safety criterion, but some outdoor seating areas will require wind mitigation screens to achieve sitting comfort criterion.

¹⁵ DA12 TP4.

¹⁶ E Chong and K Kostas, MEL Consultants, *Environmental Wind Speed Measures on a Wind Tunnel Model of the Links Development, 1041 Centre Road, Oakleigh South, 11 November 2022*

- 84 Council did not contest the findings in this report, but it submits that wind impacts should be addressed prior to a permit being granted.
- 85 I find the submission and conclusions reached in the wind report demonstrate the development will not cause unacceptable wind conditions for the ground floor pedestrian paths and outdoor dining areas. A condition will be included on the permit that requires implementation of the recommendations of the wind report which also addresses the internal amenity of outdoor communal areas within the development.

Protected Footpath to the Links shopping centre

- 86 Council is concerned there is no protected pedestrian footpath through the existing car park between the development and the Links Shopping Centre. It says there is potential for conflict between vehicles and pedestrians when they use the proposed crossings or walk through the aisles of the existing northern car park on the subject site.
- 87 The applicant submits the amended proposal addresses this concern and effectively integrates with the surrounding context. It relies on the evidence of Ms Peterson, Mr Sheppard, and Mr Gnanakone. Ms Peterson considers the additional paving along the frontage provides pedestrian access to the ground floor shops and is connected to the existing footpath in Centre Road. Mr Sheppard considers the provision of new footpaths on three edges of the subject land will provide access for pedestrians around the site and through the activity centre.
- 88 Mr Sheppard says that ideally a footpath should be provided across the large surface of the northern car park in the future. He notes:
- Ideally, a footpath will be provided across the large surface car park north of the Site in the future. However, I am instructed that the surface car park between the site and Bunnings is part of the lease to Bunnings and therefore cannot be changed as part of the application. Instead, a path is proposed along the eastern edge of the car park for those who do not wish to walk through it.¹⁷
- 89 Mr Sheppard also recommends an additional footpath, from east to west, across Link Avenue is required to prevent pedestrians walking through the landscaping to reach other footpaths.
- 90 Mr Gnanakone also assessed the pedestrian links through the subject site. He analysed heatmaps of cars parked in the northern car park on a weekday and weekend from aerial photographs. He concluded that car parking occupancy generally decreases as parking spaces become further away from the Links Shopping Centre main entrance. He says there is a lower intensity of car parking on the east side of the car park. Based on this analysis, he concludes the pedestrian access design is appropriate as:

¹⁷ Mr Sheppard evidence – [63].

- The proposed arrangement is no different to motorists parking at the end of an aisle, and walking to full length of the car park;
- Vehicles will be travelling through the car park at low speeds;
- Pedestrian crossings either exist, or are proposed where pedestrian would be required to cross Link Avenue;
- Entirely protected pedestrian crossings either exist or are proposed;
- Car parking occupancy and therefore vehicle numbers through the area likely to experience pedestrians is far less than other areas of the car park.¹⁸

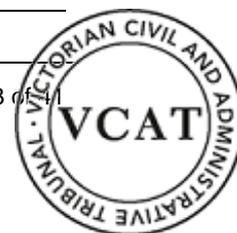
Tribunal findings

- 91 I am satisfied the additional footpaths proposed in this application will provide adequate pedestrian connections throughout the larger site to the existing supermarket and speciality shops in the Links Shopping Centre. I have come to this conclusion as the design of the plaza enables pedestrians to walk through the ground floor and connect with the new footpaths abutting the north and east boundaries. The plans show these paths have an alternative pavement treatment in the Link Avenue ‘elbow’ and there are designated pedestrian crossings that connect to these car parks.
- 92 I agree with Mr Sheppard that ideally there should be some north-south pedestrian connection through the car park when the remainder of the NAC is developed in the future. However, I accept Mr Gnanakone’s evidence that protected pedestrian crossings either exist or are proposed as part of this application. I consider this situation is similar to any shopping centre car park as pedestrians must be aware of vehicles travelling at low speed along the aisles. I also note the main entrances to the Links Shopping Centre and hardware store are further north-east of the subject land to be developed and connecting footpaths are proposed on the south side of Link Avenue.
- 93 My decision to support the current pedestrian layout is not influenced by submissions made by the applicant, and the evidence of Mr Sheppard, that the northern car park cannot be changed as part of this application due to the lease with the hardware store. My findings are based on the evidence of Mr Gnanakone and Mr Sheppard that a north-south connection is not warranted at this time.

East boundary footpath

- 94 Council argues the proposed footpath along the east boundary of the subject site may be inconvenient and unattractive, particularly for pedestrians who want to enter the main entrance of the Links Shopping Centre.

¹⁸ Mr Gnanakone evidence – page 30.



- 95 I agree with Council that this footpath provides no direct connection to the main entrance of the Links Shopping Centre. I consider this footpath will form one of many pedestrian routes that could be used by residents and customers moving throughout the site. It will also provide a designated route for pedestrians to cross the site from the new parking area on the east side of Link Avenue.

Weather protection

- 96 The plans show the ground floor occupancies with glazing in the east elevation to provide activation with Link Avenue. The podium above extends partially over the eastern footpath to provide some weather protection.
- 97 The amended plans also show a canopy partially over the footpaths abutting the south and north elevations. Mr Sheppard recommends the canopy be extended further over these footpaths for better weather protection. This was shown in indicative plans tabled in Appendix D of his evidence.
- 98 I agree with Mr Sheppard that widened canopies along the north and south elevations will encourage use of the new footpaths and connectivity within the subject site. I will include this recommendation as a condition on the permit.

IS THE LANDSCAPE RESPONSE ACCEPTABLE?

- 99 Council refused this application on the ground the proposal does not provide appropriate landscape outcomes.
- 100 The applicant refutes this proposition and relies on the evidence of Mr Schutt who reviewed the landscape master plan tabled with the application. He concluded the proposal was an appropriate outcome. This evidence was not contested by Council provided Mr Schutt's recommended amendments were included as conditions on the permit.
- 101 I too consider the landscaping proposed in the frontage and communal levels of the building will complement the existing Garden Character of the municipality. I am satisfied the landscape design can meet the objectives and requirements of the Planning Scheme in the PPF and LPPF.

DOES THE DEVELOPMENT PROVIDE AN ACCEPTABLE LEVEL OF INTERNAL AMENITY?

- 102 Council submits the proposal will provide a poor level of internal amenity as the amended plans contain no information about the interface between the dwellings and the communal open space at Level 1. It is concerned about noise attenuation and whether privacy screens are proposed to separate the courtyards from the communal open space which may lower the level of amenity, particularly for south facing dwellings.

- 103 Mr Schutt assessed the Level 1 masterplan for the podium. He considers the landscape response for this area could be improved by providing a 500mm wide planter to the northern, southern, and eastern perimeter, associated with the external terraces of apartments at that level.
- 104 I agree with Mr Schutt's suggestion that provision of planter boxes at Level 1 will contribute to the visual character of those parts of the building, whether viewed from the public realm, the adjacent apartments, or their associated external terraces. This will be included as a condition on the permit.
- 105 Council is also concerned about potential wind impacts to the communal open space at Level 1 and roof terraces. The wind assessment report states the wind conditions for the upper level outdoor communal areas and balconies at levels 1, 3 and 6 satisfy the standing comfort criterion at a minimum and the safety criterion. As previously noted, the recommendations of the wind assessment report will be included as a condition on the permit.
- 106 Ms Peterson also assessed the proposal against the standards and objectives of Clause 58.07 (Internal Amenity). She concluded it achieves a high level of compliance the internal amenity standards.
- 107 I accept Ms Peterson's evidence that the development meets the internal amenity objectives of Clause 58 in relation to daylighting, ventilation, storage, accessibility, balcony areas and room dimensions.

ARE THERE PROPOSED SIGNS ACCEPTABLE?

- 108 Clause 21.06-3 has an objective to promote and enhance the unique characteristics of each shopping centre to ensure a strong sense of identity and character, including appropriate signage.
- 109 The application proposes business identification signs and internally illuminated signs on 'signage zones' on the building.
- 110 I have reviewed the proposed signage and agree with Ms Peterson that it will provide effective identification of the businesses in the building and will not result in visual clutter along Centre Road. Internally illuminated signs are evident along this main road and will be consistent with existing signage nearby. I find the scale and location of the signs will not overwhelm the host building.
- 111 During cross-examination of Ms Peterson, it was evident that further clarification of sign dimensions for the internally illuminated logo sign are required. This can be dealt with by permit condition.

IS THE PROVISION OF CAR PARKING AND TRAFFIC IMPACTS ACCEPTABLE?

Provision

- 112 The respondent argues there is inadequate parking provided for the supermarket and each dwelling needs two car spaces.
- 113 In accordance with Clause 52.06 the statutory requirement for the proposed development is 305 spaces comprising 177 spaces for the dwellings and 128 spaces for the commercial tenancies. The development proposes 237 car spaces that includes 177 spaces for the dwellings and 61 spaces for the retail uses in the new car park on the east side of Link Avenue. This is a shortfall of 67 spaces.
- 114 The application also results in the removal of 10 car spaces in the northern car park to accommodate the crossings and turning area for the loading bay turning area.
- 115 The applicant relies on the evidence of Mr Gnanakone. Based on an empirical assessment of parking demand for commercial uses and supermarkets, he anticipates the uses will generate demand for 86 spaces. He says this equates to be a shortfall of 25 spaces.
- 116 Mr Gnanakone says the existing northern car park has a surplus of 42 car spaces, which is more than sufficient to accommodate the shortfall of parking spaces.

Tribunal findings

- 117 I am satisfied the provision of car parking is adequate as each dwelling is provided with one on-site car space which meets the statutory requirements of the Planning Scheme. The subject site is located on a main road that contains bus services and a total of 177 spaces are also provided for residents with the basement car park.
- 118 The application proposes the construction of a new 61 space car park on the east side of Link Avenue and the remaining shortfall of spaces (i.e. 25 spaces) can be met in the surplus in the existing northern car park.

Traffic

- 119 The respondent and other residents are concerned there will be increased traffic volumes in Centre Road and at the Warrigal Road intersection. They say these are very busy roads and increased traffic may impact access to surrounding residential streets.
- 120 The applicant submitted a revised traffic impact assessment (TIA) with the amended plans that was reviewed by Mr Gnanakone. He assessed the traffic generation for the commercial and residential uses and concluded his estimated volumes are comparable with the TIA.

- 121 Mr Gnanakone also reviewed the SIDRA¹⁹ assessment of traffic at the intersection of Link Avenue/Warrigal Road and Link Avenue/Centre Road that was conducted in the TIA. He considers the traffic distribution and analysis to be appropriate.
- 122 Mr Gnanakone concluded the development is expected to have a negligible impact on the surrounding road network when compared to the existing operation.

Tribunal findings

- 123 Whilst understanding the concerns of the respondent, I accept the evidence of Mr Gnanakone and findings in the TIA that the development will not have unreasonable traffic impacts on the surrounding area.
- 124 I note this application was referred to the Department of Transport who have no objection and did not require any conditions to be included on the permit.

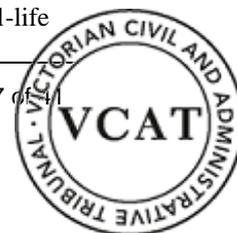
Recommended changes

- 125 Mr Gnanakone recommended several changes to the plans including the provision of an additional accessible car space and adjustment of basement ramp design. These amendments will be included as conditions on the permit.

OTHER MATTERS

- 126 Council refused this application on the ground the proposal fails to meet the objectives of Clause 58 in relation to urban context, residential policy, integration with the street and safety. These matters have been addressed in my above findings.
- 127 Council submits the proposal fails to meet Clause 58.02-4 (Dwelling Diversity) as 94.8% of dwellings have one or two bedrooms. It considers this does not provide a good range of dwelling sizes and types and is unable to meet the needs of larger households that may include children.
- 128 Ms Peterson disagrees and says the proposal provides a diversity of dwelling types a higher density in this activity centre. She considers focus towards smaller units is acceptable as there is a predominance of larger family homes in this area. She says the Australian Bureau of Statistics 2021 Census reports that 78.9% of dwellings in Oakleigh South have three bedrooms, which is greater than average for Victoria (i.e. 74.1%). She also says that only 1.9% of dwellings are one bedroom and 18.1% are two bedroom dwellings.
- 129 I agree with Ms Peterson that the focus of the development on one and two bedroom dwellings is acceptable. I have come to this conclusion as the

¹⁹ SIDRA intersection analysis is a software tool used to assess road traffic conditions using real-life traffic vehicle data.



recent ABS data indicates this area contains a very low proportion of smaller dwellings and there is a high proportion of three bedroom dwellings available for families.

- 130 The respondent is concerned the development will overlook residential properties, including those in Cameron Street. The building is set back over 40 metres from dwellings on the south side of Centre Road. These setbacks minimise the potential for overlooking of nearby residential properties.

WHAT CONDITIONS ARE APPROPRIATE?

- 131 Conditions were discussed at the hearing and any changes to the permit conditions contained in Appendix A of this order reflect those discussions plus further consideration by the Tribunal.

CONCLUSION

- 132 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Jane Tait
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/53095
LAND	1041 Centre Road OAKLEIGH SOUTH VIC 3167

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of a multi-storey building to be used for accommodation, food and drinks premises, supermarket and shop, display of signage, reduction in car parking requirements and alteration of access to a road in a Transport Zone 2

CONDITIONS

Amended Plans Required

1. Before the development and use starts, excluding demolition works, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the VCAT amended plans prepared by i2C Ryder Architects drawing numbers DA02 vTP3; DA10 vTP3; DA11 vTP3; DA12 vTP4; DA13 vTP4; DA30 vTP5; DA31 vTP5; DA32 vTP6; DA33 vTP6; DA34 vTP6; DA37 vTP6; DA38 vTP2; DA40 vTP4; DA41 vTP4; DA50 vTP3; DA51 vTP3; DA62 vTP3; DA66 vTP0; DA67 vTP0; DA69 vTP4; DA77 vTP0 dated 11 October 2022 and the Signage Plan prepared by i2C Ryder Architects drawing number DA80-DA82 vTP4 dated 2 November 2022 included at Appendix E to the Town Planning Expert Witness Statement of Colleen Peterson dated 3 November 2022, but modified to show:
 - a) Provision of an additional pedestrian crossing path from east to west across Link Avenue generally in accordance with Figure 16 of Mr Sheppard's evidence dated November 2022;
 - b) Canopies extended further over the footpaths to the northern and southern edges, generally in accordance with Appendix D to Mr Sheppard's evidence dated November 2022;
 - c) Modifications to the elevational treatment and external materials to the north, east, south and west elevations generally in accordance with Appendix D to Mr Sheppard's evidence dated November 2022, including the commission of artwork or other treatment on the west elevation, to the satisfaction of the Responsible Authority;



- d) Swapping the proposed accessible space and shared space and provision of an additional accessible space adjacent to the shared space within the car park to the east of Link Avenue, generally in accordance with Figure 11 of Mr Gnanakone's evidence dated 3 November 2022;
- e) Modifications to the basement ramp in accordance with Table 12 in Mr Gnanakone's evidence dated 3 November 2022.
- f) Provision of 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) from the edge of the exit lane of the residential vehicle crossing and both sides of the loading dock vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road or, if not achieved, an alternative method such as a mirror and / or flashing light to the satisfaction of the Responsible Authority;
- g) A turnaround bay to be provided at both ends of the blind-aisle for the eastern commercial carparking area requiring the deletion of two car spaces in total;
- h) An amended landscape plan prepared in accordance with Condition 5;
- i) An amended Waste Management Plan prepared in accordance with Condition 7;
- j) An amended Sustainable Management Plan prepared in accordance with Condition 8;
- k) Changes as a result of Condition 17;
- l) Changes as required by the Wind Report in accordance with Condition 19;
- m) Bicycle parking facilities designed in accordance with Condition 31;
- n) Any changes as set out in the plans prepared by i2C Ryder Architects drawing numbers DA32 vTP7; DA33 vTP7 and DA78 vTP0 included in Appendix E to the Urban Design Expert Witness Statement of Mark Sheppard dated November 2022 and the elevation plans prepared by i2C Ryder Architects drawing numbers DA40 vTP6, and DA41 vTP6 dated 18 November 2022; and
- o) Any changes as set out in the Signage Plan prepared by i2C Ryder Architects drawing number DA81 vTP and DA82 vTP5 dated 18 November 2022 including dimensions of signs proposed for the glazing.

All to the satisfaction of the Responsible Authority.



Layout not to be Altered

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 requested 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 plans must be generally in accordance with the plans submitted to Council prepared by OCULUS (Rev B and dated 24 October 2022) but modified to show:
 - a) Changes required under Condition 1;
 - b) Revision to the Level 1 Podium landscape plan to provide for a constructed planter of 500mm internal width to the northern, southern and eastern perimeter, associated with the external terraces of apartment at Level 1 1.
 - c) A survey and location of all existing trees, using botanical names of those existing trees to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan;
 - d) A planting schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities;
 - e) The location of any fencing internal to the site;
 - f) Planting to soften the appearance of hard surface areas such as driveways and other paved areas;
 - g) The location of any retaining walls associated with the landscape treatment of the site;
 - h) Details of all proposed surface finishes including pathways, accessways, and driveways;
 - i) The location of external lighting; and
 - j) Details of the raised planters, such as planter box materials and dimensions, mulch layer, growing media, filter media, and root barrier / water proofing layer; and
 - k) Details of the proposed method for irrigation and drainage.
 - l) Details of maintenance (including during and regime).

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

5. Before the occupation of any 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 thereafter maintained to the satisfaction of the Responsible Authority.

Management Plans

Waste Management Plan

6. Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The plan must be substantially in accordance with the Waste Management Plan prepared by Leigh Design dated 25 February 2022 but revised to show:
 - a) Changes required under condition 1 of this permit.
 - b) Provision of a detail description of the development including the TPA number, proposed uses and the number of levels in the introductory or similar early section of the report;
 - c) Provision for food organics recycling in accordance with the Sustainability Victoria Better Practice Guide for Waste Management and Recycling;
 - d) An improved waste system to increase the accessibility and convenience of recycling of food waste, e-waste, and the future separated glass waste;
 - e) All waste streams indicated for bins in each waste room;
 - f) Details of bin collection process;
 - g) Details of bin storage areas including the location of cleaning/ washing bin, drainage to sewer and indication of all waste streams supported by scale plans;
 - h) Details of responsibility for the operation of the waste management system outlines; and
 - i) Waste Management communications strategy for occupiers.

When approved, the plan will be endorsed and will then form part of the permit. Waste collection from the development must be in accordance with the plan, to the satisfaction of the Responsible Authority.

Sustainable Management Plan

7. Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainable Management Plan must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the Sustainability Management Plan prepared by GIW Environmental Solutions



Pty Ltd, except that the plan must be modified to show the amended proposal in accordance with the plans prepared by i2C Ryder Architects (dated 11 April 2022) and changes required under condition 1 of this permit.

Construction Management Plan

8. Prior to the commencement of any site works (including any demolition and excavation), a Construction Management Plan (CMP) must be submitted and approved by the Responsible Authority. No works are permitted to occur until the CMP has been approved and endorsed by the Responsible Authority. Once endorsed, the CMP will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The CMP must address the following issues:
- a) Hours for construction activity in accordance with any other condition of this permit;
 - b) Appropriate measures to control noise, dust and water and sediment laden runoff;
 - c) Appropriate measures for the prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
 - d) Appropriate 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 so as to prevent material leaving the site and being deposited on Council's road network;
 - f) A program for the 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) Measures to provide for 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) A 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) Appropriate measures to ensure that sub-contractors/tradespersons operating on the site are aware of and adhere to the requirements of the CMP;
- m) The provision of contact details of key construction site staff; and
- n) Include a requirement that except with the prior written consent of the Responsible Authority, a requirement that demolition, excavation or construction works must only be carried out during the following hours:
 - Monday to Friday (inclusive) – 7.00am to 6.00pm;
 - Saturday – 9.00am to 1.00pm;
 - Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines);
 - No works are permitted on Sundays or Public Holidays.

The provisions, recommendations and requirements of the endorsed CMP must be implemented and complied with by all contractors to the satisfaction of the Responsible Authority.

Green Travel Plan

9. Before the development is occupied, a Green Travel Plan must be prepared to the satisfaction of the Responsible Authority following consultation with the Department of Transport. The Plan must be prepared by a suitably qualified person and must encourage the use of non-private vehicle transport modes by the occupiers of the land. The Green Travel Plan must include, but not be limited to, the following:
 - a) A description of the location in the context of alternative modes of transport;
 - b) Details of end of trip facilities provided;
 - c) Education and awareness initiatives and incentives for residents and visitors to encourage more sustainable modes of travel to/from the site;
 - d) Management practices identifying sustainable transport alternatives;
 - e) Provision of electric vehicle charging facilities;
 - f) Lobby areas of building to include real time information of train, tram and bus services;
 - g) Details of bicycle spaces for staff;
 - h) Employee and resident packs (such as myki cards for new workers);
 - i) An obligation to update the plan not less than every 5 years;
 - j) Details of when and how this travel plan will be available for new staff and residents; and



- k) Any other relevant matters.

Once approved, the Green Travel Plan must form part of the permit and any ongoing Management Plan for the land to ensure the Green Travel Plan continues to be implemented by residents or owners to the satisfaction of the Responsible Authority.

10. The Green Travel Plan must not be amended without the written consent of the Responsible Authority, following consultation with the Department of Transport.

Environmental Site Assessment Report

11. Prior to the commencement of the development, excluding demolition works which may be required to finalise any environmental reports and site remediation works, the owner/developer must submit to the Responsible Authority:
 - (a) A preliminary risk screen assessment statement in accordance with the *Environment Protection Act 2017* stating that an environmental audit is not required for proposed use and development; or
 - (b) An environmental audit statement under Part 8.3 of the *Environment Protection Act 2017* stating that the land is suitable for the proposed use and development.
12. Where a Statement of Environmental Audit is issued for the land pursuant to Condition 12 above, the use and development of the land must comply with all directions and conditions contained within the Statement.
13. Where a Statement of Environmental Audit is issued for the land pursuant to Condition 12 above, prior to the occupation of the development, a letter prepared by a suitably qualified environmental consultant or other suitable person acceptable to the responsible authority, must be submitted to the Responsible Authority to verify that the directions and conditions contained within the Statement have been satisfied. Compliance sign off must be in accordance with any requirements in the environmental audit statement recommendations regarding verification of works.
14. Where a Statement of Environmental Audit is issued for the land pursuant to Condition 12 above, and any condition of that Statement requires any maintenance or monitoring of an ongoing nature, the owner must enter into an Agreement with Council pursuant to Section 173 of the *Planning and Environment Act 1987*. Where a Section 173 Agreement is required, the Agreement must be executed prior to the occupation of the development and prior to Statement of Compliance of the Plan of Subdivision. All expenses involved in drafting, negotiating, lodging, registering, executing and enforcing the Agreement, including those incurred by the Responsible Authority, must be met by the owner.



Landfill Gas Risk Assessment

15. Prior to the commencement of the development authorised under this permit, excluding demolition works (and excluding works reasonably required to conduct the landfill gas assessment), the permit holder must to the satisfaction of the Responsible Authority:

- a) Engage an appropriately qualified site assessor with demonstrated experience in the assessment of landfill gas in the subsurface environment, to conduct an assessment of any methane within the land, subsurface services and buildings and structures on the land adopting the methane gas action levels prescribed at items 6 and 7 of schedule 3 of the *Environment Protection Regulations 2021* as set out below.

<i>Item</i>	<i>Location for assessing methane gas concentration action levels</i>	<i>Methane gas concentration action level</i>
6	Subsurface services on, and adjacent to, the waste	10,000 parts per million
7	Buildings and structures on, and adjacent to, the waste	5000 parts per million

- b) Ensure that the site assessor prepares a report to be submitted to the Responsible Authority. The landfill gas risk assessment (**LGRA**) should be based on guidance prepared by the Environment Protection Authority from time to time and incorporated under the *Environment Protection Act 2017* and subordinate legislation.
- c) If the landfill gas assessment identifies methane at concentrations exceeding the methane gas concentration action levels, the permit holder must engage the services of an EPA-appointed environmental auditor to complete an environmental audit with a scope limited to:
- (i) assessment of the nature and extent of the risk of harm to human health from waste;
 - (ii) recommending measures to manage the risk of harm to human health from waste;
 - (iii) making recommendations to manage any waste, where the landfill extends onto or beneath the land.
- d) The permit holder must provide the Responsible Authority with a scope and supporting documents endorsed or determined by the Environment Protection Authority pursuant to section 208(5) of the *Environment Protection Act 2017* and a copy of the environmental audit statement and environmental audit report issued pursuant to sections 210(1) of the *Environment Protection Act 2017*.

Peer Review

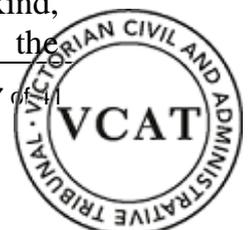
16. Prior to the commencement of the development authorised under this permit, excluding demolition works, the permit holder must:
 - a. provide to Council a copy of the LGRA undertaken in accordance with Condition 12 within 14 days of receiving the LGRA;
 - b. pay Council's costs and expenses associated with a Council-arranged peer review of the LGRA. The peer review will be undertaken by an independent and suitably qualified environmental consultant nominated by Council;
 - c. obtain a copy of the peer review obtained by Council.
17. The recommendations of the LGRA including any requirements arising from the peer review are to be implemented by the permit holder.

Wind Report

18. Before the commencement of the development, excluding demolition works, an amended Wind Assessment to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Wind Assessment will be endorsed and will form part of this permit. The amended Wind Assessment must be generally in accordance with the Wind Assessment prepared by MEL Consultants and dated 11 November 2022, but modified to include or show:
 - (a) Assess the proposal as amended pursuant to Condition 1.
 - (b) Wind tunnel model measurements undertaken to verify the findings of the desktop study.
 - (c) Achievement of the following wind conditions:
 - (i) "walking" criterion along the proposed pedestrian footpaths adjacent to the proposed development;
 - (ii) "sitting" criterion within all areas containing proposed seating (such as the outdoor seating areas for the cafes, the seating/landscaped areas within the communal open space on Level 1); and
 - (iii) "walking" criterion for the building entrances;
 - (d) Any necessary mitigation measures to achieve the above wind conditions.
19. The provisions, recommendations and requirements of the endorsed Wind Assessment Report (including wind tunnel modelling) must be implemented and complied with to the satisfaction of the Responsible Authority.

General Conditions

20. No equipment, services, architectural features or structures of any kind, including telecommunication facilities, other than those shown on the

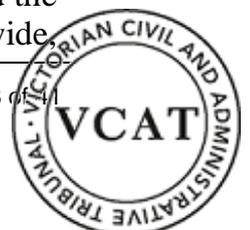


endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.

21. 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.
22. As part of the ongoing consultant team, i2C Ryder Architects or an architectural firm which is acknowledged to have comparable skill and expertise to the satisfaction of the Responsible Authority must be engaged to:
 - (a) Oversee design and construction of the development; and
 - (b) Ensure the design quality and appearance of the development is realised as shown in the endorsed plans or otherwise to the satisfaction of the Responsible Authority.
 - (c) Ensure an appropriate repair, reconstruction, paint removal and painting scheme is developed for the existing heritage building. This scheme is to carry out repairs to the awning, timber and render, tiles and other materials and authorised by a qualified heritage architect.
23. Noise levels must not exceed the permissible noise levels stipulated in the Environment Protection Regulations under the *Environment Protection Act 2017* and the Incorporated Noise Protocol (Publication 1826.4, Environment Protection Authority, May 2021) as may be amended from time to time to the satisfaction of the Responsible Authority.
24. Amplified music (including background music) is not permitted to be played other than through a sound system calibrated to ensure compliance with the Environment Protection Regulations under the *Environment Protection Act 2017* and the Incorporated Noise Protocol (Publication 1826.4, Environment Protection Authority, May 2021) as may be amended from time to time, with details submitted demonstrating how compliance will be achieved to the satisfaction of the Responsible Authority.
25. The use and development must be managed so that the amenity of the area is not detrimentally affected through the:
 - (a) Transport of materials, goods or commodities to or from the land
 - (b) Appearance of any building, works or materials
 - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil
 - (d) Presence of vermin.

Car Parking Conditions

26. Unless with the agreement of the Responsible Authority, prior to the use starts or any building is occupied, the developer is required to fully fund the design and construction of a pedestrian connection at least 1.5 metre wide.



from the Links Avenue T-intersection at the north end of the development (at the existing zebra crossing) to the eastern property boundary south of the existing water tank. Unless otherwise agreed to the satisfaction of the Responsible Authority, this pedestrian connection is to include a DDA compliant access ramp through to Stan Riley Reserve to join with the proposed Council-constructed footpath within the Reserve. Any changes to the existing retaining wall/embankment on the eastern boundary are to be included in the works, at the full cost of the developer. The existing zebra crossing at the Links Avenue T-intersection is to be modified to meet current standards. A detailed design plan of the proposed pedestrian connection must be submitted to the Council's Engineering Department for approval. The works are to be designed and constructed to the satisfaction of the Responsible Authority.

27. 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;
 - 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.

28. The layout of the development must comply with the Design Standards for car parking set out in Clause 52.06-8 of the Monash Planning Scheme as detailed below unless with the written consent of the Responsible Authority:
- a. Driveway to provide at least 2.1m headroom beneath overhead obstructions.
 - b. Driveway gradient to be no steeper than 1 in 10 (10%) within 5 metres of the frontage to ensure safety for pedestrians and vehicles.
 - c. Ramp grades (except within 5 metres of the frontage) to be designed as follows:
 - i. Maximum grade of 1 in 4.
 - ii. Provision of minimum 2.0 metre grade transitions between different section of ramp or floor for changes in grade in excess of 12.5% (summit grade change) or 15% (sag grade change).



- d. Minimum requirements for car park dimensions to be in accordance with Table 2.
 - e. Clearance to car parking spaces to be in accordance with Diagram 1 in relation to the placement of a wall, fence, column, tree, tree guard or any other structure that abuts a car space.
29. The accessible parking space should be designed in accordance with the Australian Standard for *Off-Street Parking for people with disabilities*, AS/NZS 2890.6.
30. Unless otherwise agreed to the satisfaction of the Responsible Authority, bicycle parking facilities must comply with the design and signage requirements set out in Clause 52.34 of the Monash Planning Scheme or AS2890.3:2015. Minimum 20% ground level (horizontal) parking spaces as per AS2890.3:2015 are required.
31. The proposed vehicle crossing is to be constructed in accordance with the City of Monash standards.
32. Any works within the road reserve must ensure the footpath and kerb and channel are reinstated to Council standards.

Signage Conditions

33. The location and details of the signs shown on the endorsed plans must not be altered without the written consent of the responsible Authority.
34. The signs must be constructed and maintained to the satisfaction of the Responsible Authority
35. The signs must not contain any flashing or moving light.
36. The signs must not be illuminated by external lights without the written consent of the Responsible Authority.
37. Lighting of the signs must be designed, baffled and located to the satisfaction of the Responsible Authority.
38. The intensity of the light to the signs must be limited so as not to cause glare or distraction to motorists, or loss of amenity in the surrounding area, to the satisfaction of the Responsible Authority.

Drainage Conditions

39. 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.

Expiry Conditions

40. This permit as it relates to use and development will expire if one of the following circumstances applies:
- (a) The development is not started within three (3) years of the issue date of this permit;



- (b) The development is not completed within five (5) years of the issue date of this permit.;
- (c) The use does not start within one (1) year after the completion of the development; or
- (d) The use is discontinued for a period of two (2) years.

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:

- (i) within six (6) months afterwards if the development has not commenced; or
- (ii) within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

– End of conditions –

