VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P53/2021Permit Application no.TPA/51500  |

|  |  |
| --- | --- |
| **Applicant** | David Pai C/- Pai Property Consultants |

|  |  |
| --- | --- |
| **Responsible Authority** | Monash City Council |

|  |  |
| --- | --- |
| SUBJECT LAND | 1/196 Clayton RoadCLAYTON VIC 3168 |

|  |  |
| --- | --- |
| HEARING TYPE | Hearing |

|  |  |
| --- | --- |
| DATE OF HEARING | 18 August 2021 |

|  |  |
| --- | --- |
| DATE OF ORDER | 19 August 2021 |

# Order

1. Pursuant to section 127 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:

|  |  |
| --- | --- |
| * Prepared by:
 | Pai Property Consultant |
| * Drawing numbers:
 | TP1 to TP9 Revision F |
| * Dated:
 | July 2021 |

1. Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act* *1998* the permit application and the Application for Review are amended by adding the following permit trigger:

The use of the land as a rooming house.

1. In application P53/2021 the decision of the responsible authority is set aside.
2. In planning permit application TPA/51500 a permit is granted and directed to be issued for the land at 1/196 Clayton Road Clayton VIC 3168 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* The use of the land as a rooming house;
* Buildings and works for a rooming house.

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



# Appearances

|  |  |
| --- | --- |
| For applicant | Mr Daniel Bowden, town planner of SongBowden Consultants. |
| For responsible authority | Ms Adrianne Kellock, town planner of Kellock Town Planning. |

# Information

|  |  |
| --- | --- |
| Description of proposal | A rooming house development of 15 bedrooms contained in two dwellings on the land. |
| 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 | Residential Growth Zone Schedule 3 |
| Permit requirements | Clause 52.23-2: to use the site for a rooming house; andClause 52.23-3: to construct buildings and works for a rooming house. |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 18, 21, 21,04, 21.08, 22.01, 22.04, 21.05, 32.07, 52.06, 52.23, 55, 65 & &71.02. |
| Land description | This rectangular site is on the north-east corner of Clayton and Hourigan Roads in Clayton. It has frontages of 14 and 28.5 metres to Clayton road and Hourigan Avenue respectively. It is occupied by a single storey dwelling. |

# Remarks

1. The Applicant proposes to use and develop the land at 1/196 Clayton Road, Clayton as a rooming house. The Responsible Authority refused to grant a permit on grounds relating to neighbourhood character and car parking. The Applicant seeks a review of this decision.
2. After hearing submissions, I found in the Applicant’s favour and set aside the Responsible Authority’s decision. I gave my reasons orally at that time.
3. Regarding the draft conditions, I have made the following changes in addition to changes foreshadowed at that time.
	* + - 1. I have added the phrase *‘to the satisfaction of the Responsible Authority’* to Conditions 5 and 7.
				2. I have altered draft Condition 4f) to refer to the endorsed Waste Management Plan.
				3. I have deleted draft Condition 6 because the restriction on alternative use of the land is addressed by the agreement under *section 173 of the Planning and Environment Act 1987* required by draft Condition 3. If this permit is acted on, then this agreement will be registered on the title prior to the development being constructed. Thus, there is no need to replicate this restriction in a permit condition.
				4. I have amended draft Condition 11 because many of its provisions duplicate what is required in the Waste Management Plan.
				5. I have deleted draft Conditions 12 and 13 because these requirements can be addressed in the Waste Management Plan.
				6. I have removed duplication in the drainage conditions.
				7. I have deleted draft Conditions 33 to 39 either because these matters are addressed in regulations that are not associated with the *Planning and Environment Act 1987*, or because the details required in these conditions are shown on the plans for endorsement.
				8. I have deleted draft Condition 40 because no walls are proposed on the boundaries with adjoining properties.

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

# Appendix A – Permit Conditions

|  |  |
| --- | --- |
| Permit Application No | TPA/51500 |
| Land | 1/196 Clayton RoadCLAYTON VIC 3168  |

|  |
| --- |
| What the permit allowS |
| In accordance with the endorsed plans:* The use of the land as a rooming house;
* Buildings and works for a rooming house
 |

## Conditions

### Amended Plans Required

1. Before the development and use starts, 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 plans prepared by Pai Property Consultant TP1 to TP9 Revision F, but modified to show:
	1. Unit 2, Bedroom 3 north facing habitable room windows to have sill heights of at least 1.7 metres above floor level in accordance with the requirements of Standard B22 (Overlooking objective) of Clause 55.
	2. Deletion of the bin storage area within the Clayton Road front setback.
	3. Relocate bins into an alternative location within the garages.
	4. Removal of Tree 10 and Tree 11 due to identified poor structure and poor health.
	5. Notation on plan stating ‘the existing street tree (*Crateagus sp*.) to be removed and replaced by Council at the cost of the developer’.
	6. Accessway to be realigned to connect to the footpath at right angle.

### Layout not to be altered

1. The development and use as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

### S.173 Agreement

1. Prior to the endorsement of plans referred to in Condition 1 the owner of the land must enter into an agreement with the Responsible Authority under Section 173 of the *Planning and Environment Act 1987.* In addition to the usual mechanical provisions, the agreement must provide for the following matters:
	1. That each of the rooms are used for a single occupants only and no more than fourteen (14) occupants can reside between the two buildings on site, at any given time.
	2. that no person may reside in the building unless that person is a bona fide resident or resides there in a supervisory, management or caretaker capacity;
	3. car parking spaces are only permitted to be used by the occupants of the units and their visitors and must not be subdivided, on-sold or leased to any other person;
	4. the number of residents residing on-site who have cars shall not exceed the number of on-site car spaces provided by the development;
	5. the owner and residents of the development will comply with all conditions and requirements of Planning Permit TPA/51500;
	6. Should the land cease to be used for a rooming house, a new planning permit may be required for an alternative use. It should be noted that any dispensation for on-site car parking given to the student accommodation development is not transferable to any proposed alternative use of the land. Any subsequent use will be assessed in accordance with the car parking requirements of the Monash Planning Scheme;
	7. The premises cannot be further subdivided into individual lots;
	8. The premises must be managed by a single entity.

The cost of the preparation and review of the Section 173 Agreement and its registration on the title of the land must be borne by the owner of the land.

### Rooming House Management Plan

1. Prior to the commencement of the use, a Management Plan for the facility is to be prepared, submitted to and approved by the Responsible Authority. The Management Plan must include the following:
	1. The contact details of the responsible contact person displayed in a manner and location so that it is visible to any person entering the site. This information is to be updated as required immediately following any change to the nominated responsible contact person.
	2. Details of the terms of accommodation and the maximum number of persons to be accommodated onsite.
	3. Car parking spaces are only permitted to be used by the occupants of the units and their visitors and must not be subdivided, on-sold or leased to any other person.
	4. A register that documents the allocation of car spaces, and how this will be managed.
	5. Maintenance of buildings and grounds, including all landscaped areas.
	6. The endorsed Waste Management Plan.
	7. Provision of information to residents on local public transport and amenities in the area.
	8. Permanent display of the Management Plan in a common area accessible to all residents of the facility.

### Site Manager

1. A resident on-site manager must be on the premises at all times to the satisfaction of the Responsible Authority.

### Occupancy

1. Not more than one person may reside in each bedroom shown on the endorsed plans at any one time to the satisfaction of the Responsible Authority.

### Common Areas

1. The communal areas of the buildings and open spaces on the land that are shown on the endorsed plans are to be made available and accessible to all persons occupying the premises on a shared basis at any given time to the satisfaction of the Responsible Authority.

### Waste Management Plan

1. Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan must be submitted and approved by the Responsible Authority. The plan must provide details of either a public collection or a regular private (including recyclables) collection service for the subject land and be prepared in accordance with the *Multi-Unit and Commercial Developments Waste Management Plan Guide for Applicants*. The plan must include the following:
	1. The method of collection of all waste from the land;
	2. Waste volume calculation and total waste generated per waste stream;
	3. Frequency of Waste collection and permitted collection times;
	4. Plans showing the location of bin storage areas, required bin storage equipment and features, number of bins and location of temporary bin storage at collection point(s);
	5. Provision of bin cleaning equipment, washing facilities and sewer disposal within the waste storage area;
	6. Type / Size of private waste vehicles; and
	7. Details of who will be responsible for taking out and returning bins to kerb (only use if collection is proposed from street).

### Hours for Waste Collection

1. Private waste collection only to be carried out within hours prescribed by EPA guidelines to the satisfaction of the Responsible Authority.

### Landscaping

1. Before the commencement of buildings and works, 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 a minimum one (1) canopy tree with spreading crown;
	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; and
	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.

### Tree Protection

1. Prior to the commencement of any works that are permitted by this permit, all trees that are to be retained, or are located within or adjacent to any works area, shall be marked and provided with a protective barricade and verified by an authorised officer of the Responsible Authority.
2. No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained during the construction period of the development hereby permitted.
3. Tree protective measures as prescribed in the Arborist Report (18 June 2020) and Tree Management Plan (18 June 2020) prepared by *The English Gardener* being strictly adhered to with respect to trees to be retained.

### Landscaping Prior to Occupation

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.

### Street Tree Removal & Replacement

1. The existing street tree (*Crateagus sp*.) will be removed and replaced by Council at the cost of the developer prior to the commencement of the development.

### No Structures Above Roof Level

1. No equipment, services, architectural features or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.

### Common Boundary Fences

1. All common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line.

### Drainage

1. The site must be drained to the satisfaction of the Responsible Authority.
2. A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works for approval. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.
3. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing; or any alternate system.
4. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
5. The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.
6. 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.
7. The private on-site drainage system must prevent stormwater discharge from the driveway over the footpath and into the road reserve. The internal drainage system may include either:
* a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
* shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
* another Council approved equivalent.
1. The nominated point of stormwater connection for the site is to the south-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the Council pit in the naturestrip to be constructed to Council standards. (A new pit is to be constructed to Council standards if a pit does not exist, is in poor condition or is not a Council standard pit). Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

### Completion of Buildings and Works

1. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

### Permit Expiry

1. This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
* The development has not started before two (2) years from the date of issue.
* The development is not completed before four (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 –**