

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11033/2021  
PERMIT APPLICATION NO.TPA/49751A

<b>APPLICANT</b>	Pace Development Group Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>RESPONDENT</b>	Craig Larkin
<b>REFERRAL AUTHORITY</b>	The Head, Transport for Victoria
<b>SUBJECT LAND</b>	554-558 High Street Road MOUNT WAVERLEY VIC 3149
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	16 May 2022
<b>DATE OF ORDER</b>	16 May 2022

## ORDER

### Permit amended

- 1 In application P11033/2021 the decision of the responsible authority is set aside.
- 2 Planning permit TPA/49751A is amended and an amended permit is directed to be issued for the land at 554-558 High Street Road MOUNT WAVERLEY VIC 3149. in accordance with the endorsed plans and the conditions set out in Appendix A. The amended permit allows:
  - Use of the land as a 'retirement village' under clause 32.08-2 of the General Residential Zone;
  - Use of the land as a 'food and drink premises (café)' under clause 32.08-2 of the General Residential Zone;
  - Construction of a building or construction or carrying out of works for a section 2 use under clause 32.08-9 of the General Residential Zone;
  - Construction of a building or construction or carrying out of works under clause 44.05-2 of the Special Building Overlay;
  - Creation or altering of access to a road in a Road Zone, Category 1; and
  - Reduction of the car parking requirement for the food and drink premises under Clause 52.06 of Car Parking.

Tracey Bilston-McGillen  
**Member**



## APPEARANCES

For applicant	Mr Jarryd Gray, solicitor Minter Ellison.
For responsible authority	Mr Jeremy Wilson, solicitor Maddocks.
For referral authority	No appearance.
For respondent	No appearance.

## INFORMATION

Description of proposal	<p>The Amendment Application seeks to make the following changes to the current approval under the Permit:</p> <ul style="list-style-type: none"><li>• increased the number of dwellings from 79 to 88 comprising, 33 x 1 bedroom; 10 x 2 bedroom and 1 bathroom; 45 x 2 bedroom and 2 bathroom,</li><li>• increased car parking provision from 89 to 91;</li><li>• increased bicycle parking provision from 53 to 58;</li><li>• reduction in the floor area for the food and drink premises from 181sqm to 163sqm;</li><li>• rearrangement of apartment layouts;</li><li>• total number of 1 bedroom apartments increased from 18 to 33;</li><li>• total number of 2 bedroom apartments decreased from 61 to 55;</li><li>• changes to the size and location of the Gym and Yoga room to provide 3 additional dwellings with balconies fronting High Street Road on the ground floor level;</li><li>• rearrangement of the concierge facilities.</li></ul>
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Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. <sup>1</sup>
Planning scheme	Monash Planning Scheme.
Zone and overlays	General Residential Zone Schedule 2. Special Building Overlay.
Permit requirements	<p>Clause 32.08-2 A permit is required to use the land for a food and drinks premises and retirement village in the General Residential Zone, Schedule 2.</p> <p>Clause 32.08-9 A permit is required to construct a building or construct or carry out works associated with a use in section 2 of clause 32.08-2.</p> <p>Clause 44.05-2 A permit is required to construct a building or to construct or carry out works in a Special Building Overlay.</p> <p>Clause 52.29 A permit is required to alter access to a road in a Road Zone, Category 1</p>
Land description	<p>The review site is located on the south side of High Street Road, Mount Waverley, between Blackburn Road to the east and Lee Avenue to the west. The lot is irregular in shape with a frontage of 61.55 metres to High Street Road and a site area of 2619 square metres.</p> <p>The land slopes down from the frontage to the rear of the site, falling approximately 5 metres. Previously occupied by buildings used for commercial purposes with parking in the front setback, the land is now vacant.</p>

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<sup>1</sup> Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision.



## REASONS<sup>2</sup>

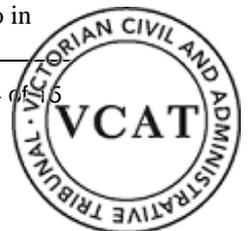
- 1 After having heard from the two parties, considered their written and oral submissions, I gave an oral decision with reasons to approve the proposed amendments subject to a further change deleting the three apartments proposed to be located on the High Street Road frontage.
- 2 The decision of the responsible authority is set aside. A modified permit is granted.

Tracey Bilston-McGillen  
**Member**

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<sup>2</sup> 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 the oral reasons.

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## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	TPA/49751A
<b>LAND</b>	554-558 High Street Road MOUNT WAVERLEY VIC 3149

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Use of the land as a 'retirement village' under clause 32.08-2 of the General Residential Zone;
- Use of the land as a 'food and drink premises (café)' under clause 32.08-2 of the General Residential Zone;
- Construction of a building or construction or carrying out of works for a section 2 use under clause 32.08-9 of the General Residential Zone;
- Construction of a building or construction or carrying out of works under clause 44.05-2 of the Special Building Overlay;
- Creation or altering of access to a road in a Road Zone, Category 1; and
- Reduction of the car parking requirement for the food and drink premises under Clause 52.06 of Car Parking.

### CONDITIONS

- 1 Before the development commences, except demolition, site levelling and excavation works, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans prepared by Cera Stribley Architects, Revision D Dated 18.6.22 TP – 101, 102, 107, 108, 109, 110, 111, 300, 301, 302, 304, 400, 401, 402, Rev E dated 103, 104, 105, 106 but modified to show:
  - (a) The ground floor plan and northern elevation to be modified generally in accordance with the plan submitted as part of the VCAT Hearing 16.5.2022 and identified as Rev F Dated 28.3.2022 TP105 and TP300.



- (b) The western wall of levels 4 and 5 (affecting units 502, 503, 602 & 603 only) setback an additional 6 metres (approximately) from the western boundary and associated modification to unit layout;
- (c) Designation of glazing to High Street Road at ground level as clear;
- (d) The location of any required fire services, electricity supply, gas and water meters, discreetly integrated into the development;
- (e) Accessible parking spaces to be relocated to the Lower Ground level close to the lift to enable ease of use by visitors to the commercial activities on site;
- (f) Parking spaces assigned to commercial and residential visitor uses with spaces signed and line-marked accordingly;
- (g) The location of the intercom system to be at least 4.5 metres from the site boundary to allow a vehicle to prop within the site;
- (h) The minimum headroom clearance above the entrance ramp increased from 2.84 metres to a minimum of 2.94 metres;
- (i) 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 vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road;
- (j) The location of air conditioning/heating units in basement, on roof or within balconies of individual units where the balcony size exceeds 10 square metres. On balconies or on the roof, the air conditioning/heating units must be screened from public view;
- (k) Any changes, recommendations or requirements of the Sustainable Management Plan prepared and submitted to and approved by the Responsible Authority in accordance with condition 8;
- (l) The changes required by Department of Transport;
- (m) The changes required by Melbourne Water;
- (n) The storage cages reconfigured to allow the basement 1 parallel spaces 21 & 22 to be 300mm clear of obstructions higher than 150mm; and
- (o) Basement 1 space 28 & Basement 2 space 53 complies with the clearance to car parking spaces in accordance with Diagram 1 in Clause 52.06-9 of the Monash Planning Scheme.

all to the satisfaction of the responsible authority.



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

### **Waste Management Plan**

- 3 Before the development commences, except demolition, site levelling and excavation works, a waste management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the waste management plan will be endorsed and will form part of this permit. The waste management plan must provide for:
  - (a) the method of private garbage collection and recyclables;
  - (b) appropriate areas of bin storage on site and areas for bin storage on collection days;
  - (c) measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas; and
  - (d) measures for litter management.
- 4 The provisions, recommendations and requirements of the endorsed waste management plan must be implemented and complied with to the satisfaction of the Responsible Authority.
- 5 Adequate provision must be made for the storage and collection of garbage and other solid wastes and these facilities are to be located on the site to the satisfaction of the Responsible Authority.

### **Construction Management Plan**

- 6 Before the development commences, a construction management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must include:
  - (a) a traffic management plan, including the management of traffic during the excavation and construction periods of the development to and from the site, general traffic management and any closing or altered access to the rear laneways including pre-consultation measures with all owners and occupiers of land who have a legal right of access to these laneways;
  - (b) measures to control noise, dust and water runoff;
  - (c) prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
  - (d) the storage location of building materials during construction;
  - (e) site security;

- (f) maintenance of safe movements of vehicles to and from the site during the construction phase;
  - (g) storage of plant, equipment or materials not to be permitted on the easement;
  - (h) on-site parking of vehicles associated with construction of the development;
  - (i) wash down areas for trucks and vehicles associated with construction activities;
  - (j) cleaning and maintaining surrounding road surfaces;
  - (k) a requirement that construction works must only be carried out during the following hours:
    - i Monday to Friday (inclusive) – 7.00am to 6.00pm;
    - ii Saturday – 9.00am to 1.00pm;
    - iii Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings. This does not include excavation or the use of heavy machinery.)
- 7 The construction works associated with the permitted use/development and/or subdivision must only be carried out during the following hours:
- i Monday to Friday (inclusive) – 7:00am to 6pm;
  - ii Saturday – 9am to 1pm;
  - iii Saturday – 1pm to 5pm (only activities associated with the erection of buildings);

Unless otherwise approved in writing by the Responsible Authority.

### **Sustainable Management Plan**

- 8 Before the development commences, except demolition, site levelling and excavation works, a sustainable management plan (**SMP**) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended sustainable management plan will be endorsed and will form part of this permit. The report must include, but is not limited to, the following:
- (a) Demonstration of how ‘best practice’ sustainability measures have been addressed, having regard to the relevant aspects of clause 21.13 and clause 22.13 of the Monash Planning Scheme.
  - (b) Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
  - (c) Document the means by which the appropriate target or performance is to be achieved.



- (d) Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
  - (e) Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.
- 9 All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to the endorsed Sustainable Management Plan may occur without written consent of the Responsible Authority and (to the extent material and necessary) any relevant flow-on changes to the design response must be also incorporated into the endorsed architectural plans.
- 10 Before the development is occupied, a report from the author of the sustainable management plan, approved under this permit, or similarly qualified person or company, must be submitted to and approved by the Responsible Authority. When approved, the report will be endorsed and will form part of this permit. The report must be to the satisfaction of the Responsible Authority and must confirm all measures specified in the sustainable management plan have been implemented in accordance with the approved sustainable management plan.

### **Landscape Plan**

- 11 Before the development commences, except demolition, site levelling and excavation works, a landscape plan showing the landscaping and urban design streetscape treatment of the site and public realm, drawn to scale and dimensioned to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the landscape concept plan prepared by Urbis dated 4 July 2019, Rev C LCC001 & LC002 but modified to show:
- (a) the proposed urban design treatment of the site and public areas to High Street Road which immediately interface with the site;
  - (b) details of all proposed hard surface materials/paving;
  - (c) street furniture, including public signage, bins, seats, bicycle facilities, gates, fences and the like;
  - (d) the location of all existing trees and other vegetation to be retained on site;
  - (e) proposed vegetation including provision of street trees;
  - (f) 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;
  - (g) disabled access features;
  - (h) the extent of any cut, fill, embankments or retaining walls; and



- (i) any other feature deemed appropriate to the satisfaction of the Responsible Authority.
- 12 Before the development commences, except demolition, site levelling and excavation works, a written submission accompanying the landscape plan must setting out the responsibility for the payment and implementation of these works to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority.
- 13 When approved the landscape plan and submission will be endorsed and will form part of the permit.
- 14 Before the development is occupied, landscaping and urban design 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.

**Parking, Access, Loading and Unloading**

- 15 Before the development permitted is completed, 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 or other durable surface treatment to the satisfaction of the Responsible Authority;
  - (d) drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority; and
  - (e) line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.
- 16 Parking areas and access lanes must be kept available for these purposes at all times.
- 17 The loading and unloading of goods from vehicles must only be carried out on the land.
- 18 A sign to the satisfaction of the Responsible Authority must be provided directing drivers to the area set aside for car parking and must be located and maintained to the satisfaction of the Responsible Authority. The sign must not exceed 0.3 square metres.
- 19 Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council pits and these works are to be inspected by Council (telephone 9518 3555).



- 20 The layout of the development shall follow the Design Standards for car parking set out in Clause 52.06-9 of the Monash Planning Scheme as detailed below:
- (a) Driveway to provide at least 2.1m headroom beneath overhead obstructions.
  - (b) 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).
  - (c) A passing area at least 5m wide and 7m long provided at the entrance of the property.
  - (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.
- 21 The driveway and parking area (apart from parking space dimensions) must be designed in accordance with the Australian Standard for Off - Street Car Parking, AS/NZS 2890.1.
- 22 Redundant crossings are to be removed and reinstated with kerb and channel to the satisfaction of the Responsible Authority.
- 23 All new crossings, unless otherwise agreed by the relevant service authority, are to be no closer than 1.0 metre measured at the kerb to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process. The relocation of any affected power pole must be within the development frontage or to the satisfaction of Responsible Authority.
- 24 On-site staff and customer parking spaces are required to be clearly marked to the satisfaction of the Responsible Authority.
- 25 The accessible parking spaces should be designed in accordance with the Australian Standard for Off-Street Parking for people with disabilities, AS/NZS 2890.6. The vehicle path to and from each accessible space shall have a minimum headroom of 2200mm. The headroom above each dedicated space and adjacent shared area shall be a minimum of 2500mm. The accessible spaces are to be relocated on the Lower Ground level close to the lift.



## **Amenity**

- 26 The amenity of the area must not be detrimentally affected by the use or development, through the:
- (a) transport of materials, goods or commodities to or from the land; and
  - (b) appearance of any building, works or materials.
- 27 No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land to the satisfaction of the Responsible Authority.

## **Drainage**

- 28 Before the development starts, except demolition, site levelling and excavation works, a drainage plan drawn to scale and dimensioned must be approved by the Responsible Authority showing a drainage scheme providing for the collection of stormwater within the site and for the conveying of the stormwater to the nominated point of discharge.
- 29 The nominated point of discharge is the south-east corner of the property where the entire sites stormwater must be collected and free drained via a pipe to the Council pit in the easement of the Council reserve to be constructed to Council Standards. A new pit is to be constructed if a pit does not exist or is not a standard council pit). If the point of connection cannot be located then notify Council's Engineering Department immediately.
- 30 All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties to the satisfaction of the Responsible Authority.
- 31 Stormwater discharge is to be detained on-site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.
- 32 Any new drainage work within the road reserve requires the approval of the Council's Engineering Division prior to the works commencing.

## **Melbourne Water conditions**

- 33 Apartments 001-007 within Basement 01 level must be constructed with finished floor levels set no lower than 300mm above the applicable grading flood level.
- 34 All habitable areas within the Ground floor must be constructed with finished floor levels set no lower than 102.95 metres to Australian Height Datum (AHD), which is 300mm above the applicable flood level of 102.65 metres to AHD.



- 35 All doors, windows, vents and openings to the basement car park must be set no lower than 102.95 metres to AHD which is 300mm above the applicable flood level of 102.65 metres to AHD.
- 36 The entry / exit driveway of the basement carpark must be constructed to incorporate a flood proof apex set no lower than 102.95 metres to AHD which is 300mm above the applicable flood level of 102.65 metres to AHD.
- 37 A building setback of two metres along the western and south-western boundaries is required to allow for the free flow of flood waters. This setback must be set at natural ground level and be free of any solid structures such as sheds, masonry fencing, water tanks or any raised landscaping to the satisfaction of Melbourne Water.
- 38 Landscaping within the two metre setback referred to in Condition 40 of Planning Permit TPA/49751A, must be as shown on the landscape concept plan prepared by Urbis dated 30.11.2020, LCP\_001, LCP\_002, LCP\_003 - Revision: F & LCP\_004 -Revision: B or to the satisfaction of Melbourne Water.
- 39 Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor and driveway apex levels (as constructed) reduced to the Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.
- 40 Imported fill must be kept to a minimum on the property and only be used for the sub floor areas of the dwellings, garages and driveway ramps.
- 41 Any new internal fences or gates must be of an open style of construction (minimum 50% open) to allow for the passage of floodwaters/ overland flows to the satisfaction of Melbourne Water.
- 42 Any new south or west boundary fences or gates must be of an open style of construction (minimum 50% open) OR timber paling for the passage of floodwaters/overland flows to the satisfaction of Melbourne Water.
- 43 Prior to the commencement of works, a separate application direct to Melbourne Water must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses using our online application process. Prior to accepting an application, evidence must be provided demonstrating that Council considers that it is not feasible to connect to the local drainage system.
- 44 Melbourne Water takes no responsibility for the ownership or ongoing management of the constructed swale at the western property boundary.

#### **Department of Transport conditions**

- 45 Prior to the commencement of use of the development hereby approved, a sealed access crossover and driveway as at least 6 metres wide, with the



crossover flared at 60 degrees with 3.0 metre radial turnouts at the kerb, must be constructed to the satisfaction the Responsible Authority and at no cost to the Head, Transport for Victoria.

- 46 Prior to the commencement of the use hereby approved all disused or redundant vehicle crossings must be removed and the area reinstated to the satisfaction of the Responsible Authority and at no cost to Head, Transport for Victoria.
- 47 Vehicles must enter and exit the land in a forward direction at all times.
- 48 The level of the footpaths must not be lowered or altered in any way to facilitate access to the site.
- 49 The demolition and construction of the development must not disrupt bus operations on High Street without the prior written consent of the Head, Transport for Victoria.
- 50 Any request for written consent to disrupt bus operations on High Street during the demolition and construction of the development must be submitted to the Head, Transport for Victoria not later than 8 weeks prior to the planned disruption and must detail measures that will occur to mitigate the impact of the planned disruption.

#### **General conditions**

- 51 Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
- 52 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.
- 53 Any required fire services, electricity supply, gas and water meter boxes must be discreetly located and/or screened to compliment the development to the satisfaction of the Responsible Authority. Any required services must be cleared detailed on endorsed plans forming part of this permit.
- 54 Once the development and use has started it must be continued and completed to the satisfaction of the Responsible Authority.

#### **Expiry of permit**

- 55 This permit will in accordance with section 68 of the *Planning and Environment Act 1987* expire if:
  - (a) the development does not start within 2 years of the date of this permit;
  - (b) the development is not completed within 4 years of the date of this permit; or



- (c) the use does not start within 2 years after the completion of the development allowed under this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the period referred to in this condition.

**– End of conditions –**

