VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P721/2019  Permit Application no. TPA/49990 |
| CATCHWORDS | |
| Section 79 *Planning and Environment Act 1987*; Monash Planning Scheme; Neighbourhood Residential Zone Schedule 2; Neighbourhood Residential Zone Schedule 3; Residential Aged Care Facility; Clause 53.17; Visual Bulk; Amenity Impacts. | |

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| APPLICANT | Steller Care Oakleigh Pty Ltd |
| responsible authority | Monash City Council |
| Referral Authority | Roads Corporation |
| RESPONDENT | Therese Desmond - OC Connections |
| SUBJECT LAND | 1-9 Allen Street and 777-781 Warrigal Road, OAKLEIGH VIC 3166 |
| WHERE HELD | Melbourne |
| BEFORE | Joel Templar, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 16 September 2019 |
| DATE OF ORDER | 28 October 2019 |
| CITATION | Steller Care Oakleigh Pty Ltd v Monash CC [2019] VCAT 1670 |

# Order

### Parties to proceeding

1. Pursuant to section 60 of the *Victorian Civil and Administrative Tribunal Act* 1998, the following person is joined as a party to the proceeding:

Therese Desmond - OC Connections

### Amend permit application

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

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| * Prepared by: | Via Architects |
| * Drawing numbers: | TP010, TP100 to TP104, TP200 to TP202, TP300, TP500 to TP503 and TP600. |
| * Dated: | 9 August 2019 |

### Permit granted

1. In application P721/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/49990 a permit is granted and directed to be issued for the land at 1-9 Allen Street and 777-781 Warrigal Road  
   OAKLEIGH VIC 3166 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Construction of a residential aged care facility.
* Use and development of the land for a medical centre.
* Alteration of access to a road in a Road Zone Category 1.

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| **Joel Templar**  **Member** |  |  |

# Appearances

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| For Steller Care Oakleigh Pty Ltd | Mr Andrew Bromley, town planner of Pitard Group. |
| For Monash City Council | Ms Maria Marshall, solicitor of Maddocks Lawyers. |
| For Roads Corporation | No appearance. |
| For Therese Desmond - OC Connections | Mr James Livingston, town planner of JLP Melbourne. |

# Information

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| Description of proposal | The proposal includes the construction of a four storey building including basement car parking. To a large extent, the building would be three storeys and would extend to 4 storeys towards the eastern end of the land owing to the falling topography towards the east. It would be an overall maximum height of 13.3 metres, would provide a porte cochere with pickup and drop-off area along the Allen Street frontage with a semicircular driveway and entrance and exit crossovers. The facility would provide 154 beds for the aged care facility, a medical centre on the ground level fronting Warringal Road for up to 6 medical practitioners operating between 7:00am and 8:00pm seven days a week. A new vehicle crossover is also proposed towards the end of Allen Street providing access to the basement car park which proposes to provide 56 on-site car parking spaces. Existing vehicle crossovers to Warringal Road would be removed. |
| Nature of proceeding | Application under section 79 of the *Planning and Environment Act 1987* – to review the failure to grant a permit within the prescribed time.[[1]](#footnote-1) |
| Planning scheme | Monash Planning Scheme (the Scheme) |
| Zone and overlays | Neighbourhood Residential Zone (NRZ) Schedules 2 (NRZ2) and 3 (NRZ3). |
| Permit requirements | Clause 32.09-2 – to use land for a medical centre.  Clause 32.09-8 - to construct a building or construct or carry out works for a residential aged care facility.  Clause 32.09-8 also sets out that a development must meet the requirements of Clause 53.17 - Residential aged care facility.  Clause 32.09-9 - to construct a building or construct or carry out works for a use in Section 2 of Clause 32.09-2.  Clause 52.29 – to create or alter access to a road in a Road Zone, Category 1. |
| Land description | The review site is located approximately 700 metres south of the Monash Freeway on the north-eastern corner of the intersection of Warrigal Road and Allen Street in Oakleigh. It comprises four individual titles with three of those supporting three detached single storey dwellings fronting Warrigal Road. The fourth parcel is vacant and has an extensive frontage to Allen Street. The site is irregular in shape with an overall area of 6309 m² with a total 44.5 metre frontage to Warrigal Road and 115.5 metre frontage to Allen Street. The land slopes from south-west to north-east with a more significant fall towards the north-eastern and eastern boundaries. |
| Tribunal inspection | 15 September 2019 and 28 October 2019 |

# Reasons[[2]](#footnote-2)

## What is this proceeding about?

1. There is no doubting that there is an increasing need for the provision of aged care facilities and services across Melbourne and Victoria. Recent planning scheme amendments have been made to all planning schemes in Victoria giving a high priority to the facilitation of residential aged care facilities and recognising their functional requirements will result in built form outcomes that are different in their contexts.
2. The inclusion as part of this most recent planning scheme amendment of a particular provision that solely relates to RACFs, emphasises the importance of these facilities to be provided insofar as the Scheme is concerned.
3. However, the facilitation and provision of these facilities is not at any cost and the Scheme does not cast aside the requirements for good design and responsive design to the context of any given proposal.
4. Whilst the physical and policy context of the review site lends general support to this particular proposal, this case is one where the particular design response and high-quality design outcome tips the balance in favour of positive findings.
5. This proceeding concerns the review by the applicant of the council’s failure to decide an application within the prescribed time for an application for the use and development of the land for a residential aged care facility (RACF), medical centre and alteration of access to a road in a road zone category 1.
6. Despite the Council’s failure to determine the application prior to the lodgement of this proceeding, it resolved that it would have refused the application on a number of grounds. The grounds related to the proposal being inconsistent with policy, the Monash Housing Strategy 2014, the objectives of the NRZ and purpose of clause 53.17. Excessive built form, impact on the amenity of surrounding land and access to the proposed medical centre were also grounds raised.
7. The Council did not dispute the acceptability of the review site for an RACF, partly based on the fact it had previously issued a planning permit for one on the review site and which is still valid, and the fact the use of the land for an RACF does not require a permit under the NRZ.
8. The Council’s submissions focussed on the impact of the built form in the context of both the review site and the relevant provisions and policies of the Scheme. In doing so, it said that the provisions of clause 53.17 must be met, but so too must other relevant parts of the Scheme, including zone and zone schedule purposes and relevant policy – clause 53.17 does not sit in isolation to other relevant parts of the Scheme. It said that the exercise to be undertaken with this proposal was a balancing of all of the competing policies and provisions applicable and in doing so, the built form was not an acceptable outcome having regard to those and in the physical context within which the review site sits. The Council said that the proposal has had little regard to other parts of the Scheme other than clause 53.17 and therefore fails to result in an acceptable outcome.
9. The respondents (OC Connections, a disability service provider) occupy land to the north including a respite home at 775 Warrigal Road. It said the proposed built form would impact on the respite home, including habitable room windows and secluded private open space (SPOS) and also on the OC Connections centre which is used for disability services and includes activities on the land for disabled persons. It said the Tribunal should have regard to the nature of the adjoining use and the impact the proposal would have on the clients, including that the clients of the centre may be more impacted given their particular needs.
10. The Applicant submitted that there is strong policy support for the proposal, with specific policy for RACFs and a particular provision at clause 53.17. It said that both of these parts of the Scheme lend considerable support for this proposal and acknowledge that built form associated with RACFs will be different. The applicant also submitted that the review site is an excellent candidate for the proposal due to features such as its large size, lack of residential abuttals, location on an arterial road with proximity to Chadstone Shopping Centre and the Oakleigh activity centre and the history of part of the site for non-residential purposes. It was also submitted that the proposed built form was appropriate, both in its physical context but also in response to the Scheme’s recognition of differing built form expected for RACFs. It said the requirements of clause 53.17 were met, as well as satisfying relevant policy
11. Having regard to the submissions at the hearing, the key issues to be determined in this matter are:
    1. Is the proposal an acceptable response to its context?
    2. Will there be any unacceptable off-site amenity impacts.
12. Taking into account the significant policy support for such facilities, the key reason why this proposal is acceptable is the high quality architectural outcome including the design detail, articulation, architectural and façade treatment, including materials and finishes and ability for landscaping to be included along property boundaries. The context of the site having a Warrigal Road frontage and the attributes of Allen Street are also significant contributors to my decision in combination with the above design features. These are critical factors in my determination that the proposal is acceptable. Any lesser design response in this sense would not have resulted in the same decision.
13. Before I set out my main findings, I address the physical and planning context of the site.

## physical context

1. The review site is located on the north-eastern corner of Warrigal Road and Allen Street in Oakleigh. It is a particularly large site at over 6300 m² in area and has frontage to both Warrigal Road and Allen Street. It comprises four parcels of land, three of which front Warrigal Road each having a single detached dwellings currently located on them. The fourth parcel fronts Allen Street and is particularly large in size and was once associated with the land to the north that is currently used for OC Connections.
2. The site sits between the Monash Freeway to the north and the Princes Highway to the south, with the Chadstone shopping centre located approximately 300 m to the west.
3. The review site slopes down towards the north, north-east and east. There is approximately 7.5 metres fall from the south-west corner to the north-east corner. Much of the fall is within the eastern third of the 1-7 Allen Street parcel, with considerable fall towards the northern and eastern boundaries of this lot.
4. The review site abuts a public reserve along the eastern boundary which is part of the Scotchmans Creek trail environs. This reserve is quite vegetated particularly along the interface with the review site. This existing vegetation substantially screens the review site from vantage points along the creek line, particularly to the north. There are existing trees along the remainder of this boundary within the reserve abutting the east of the review site but they are more sparse, opening up views to the review site moreso than is visible from further north.



Aerial Photograph of the review site and surrounds. Source: Nearmap 31 August 2019

1. Allen Street is a particularly wide street in a suburban context at approximately 30 metres in width. It includes one lane of traffic in each direction and a large median area for most of its length which supports line-marked car parking spaces perpendicular to the traffic lanes as well as some areas of landscaping. The nature strips on either side of the road pavement are also generous in width at approximately 4.5 metres.
2. Other immediate abuttals are the respondent’s land. There are two parcels belonging to the respondent that abut the review site to the north.
3. One of these parcels supports the main building and operations, administrative and activities building, which has a car park and informal outdoor seating directly abutting the eastern portion of the northern boundary of 1-9 Allen Street. The car park and outdoor area are considerably lower in elevation than the review site, with a retaining wall adjacent to the car park. The main building is more institutional/commercial in appearance and is single storey in scale. Areas used by clients for outdoor activities are more removed from the review site towards the north and are approximately 40 metres from the closest point with the review site.
4. The other parcel supports a single storey dwelling used for respite purposes, associated with the respondent’s operations. This parcel abuts the western portion of the review site and fronts Warrigal Road. The dwelling on this parcel is constructed very close to the common boundary and has two outdoors area at the rear. A number of windows are located along the southern elevation of this dwelling, directly facing the review site, some of which are associated with habitable rooms.
5. On the opposite side of Allen Street is a residential area subject to a heritage overlay (HO93) which supports a number of single storey, detached dwellings on large sized lots with generous front setbacks and low front fences.
6. Opposite the site to the west, single storey detached dwellings are located on large allotments generally with low front fences. These dwellings although single storey, have more of a 1.5 storey appearance, with floor levels well above natural grade, some with undercroft car parking owing to the slope of the land. The topography continues to rise to the west and south-west, with existing residential development beyond being quite visible.
7. Development to the south and south-west starts to increase in scale and intensity, with a number of large, detached double storey dwellings and multi-storey, apartments buildings.
8. The immediate context of the review site is one generally of single storey detached dwellings set in spacious garden settings. Large, tall and continuous built form is not generally present in the immediate context of the review site. The streetscapes are however influenced by the attributes and nature of the road reserves.

## planning context

### Planning Scheme Policy and Provisions

1. A planning permit is triggered under a number of provisions in the Scheme and these have been set out above.
2. A permit is required pursuant to clause 32.09-8 (NRZ), which is a specific clause requiring a permit for RACFs. This clause also sets out that a proposal for an RACF must meet the requirements of clause 53.17.
3. Decision Guidelines of the NRZ include consideration of the purpose of the zone and objectives set out in any schedule.
4. The purpose of the NRZ is:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To recognise areas of predominantly single and double storey residential development.

To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.

To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

1. The review site has two different schedules of the NRZ applying to it, being NRZ2 and NRZ3. NRZ2 applies to the 109 Allen Street parcel and NRZ3 applies to the three lots fronting Warrigal Road.
2. The objectives of NRZ2 are:

To emphasise the visual dominance of landscaping, particularly along the interfaces with the creek corridors.

To ensure new development transitions down in scale towards the creeks, respecting and reinforcing the natural topography.

To respect and enhance the existing character and functions of the open spaces along the creek corridors.

1. The objectives of NRZ3 are:

To ensure new development transitions down in scale towards the creeks, respecting and reinforcing the natural topography.

To ensure development is defined by its spacious and generous garden settings, tall canopy trees and consistent built form and setbacks.

1. Both of these schedules also include Decision Guidelines which must be considered as appropriate and to which I have had regard but do not recite here.
2. There are specific provisions and policies within the Scheme for RACFs. These include clause 16.07-1S and Clause 53.17 (Residential Aged Care Facility). Both of these clauses have similar aims which include facilitating well-designed RACFs.
3. State level policy seeks to:

* ensure than an appropriate quantity, quality and type of housing is provided, including aged care facilities and other housing suitable for older people;[[3]](#footnote-3) and

1. Clause 16.07-1S includes the following Strategies:

Recognise that residential aged care facilities are different to dwellings in their purpose and function, and will have a different built form (including height, scale and mass).

Ensure that residential aged care facilities are designed to respond to the site and its context.

Promote a high standard of urban design and architecture in residential aged care facilities.

1. The Scheme[[4]](#footnote-4) also seeks that health facilities, including aged care facilities, be integrated with local communities taking into account current and future demand.
2. Clause 22.01, Residential Development and Character Policy, applies to all residential land[[5]](#footnote-5). It is derived from the 1997 Monash Urban Character Study and includes the following general policy guidance:

* The quality and style of surrounding development be respected, including the maintenance of consistent setbacks in areas where incremental change is expected.
* The treed character of areas be complemented and preserved.
* The Garden City and streetscape character of the neighbourhood be maintained and enhanced.
* Development be sensitive to heritage buildings and areas.
* The impact of bulk and scale of development, be minimised, where possible.
* Consolidation of sites is encouraged.

1. It also has general policy guidance that the existing character be respected by any proposed development.
2. Part of the review site[[6]](#footnote-6) is located within Precinct A under this clause which seeks the following desired future character:

* Protecting existing streetscape elements.
* Development that is out of scale with existing dwellings will not be supported.
* Sympathetically designed architecture in preference to imitation of historic styles
* Low fencing
* Additional tree planting

1. Clause 53.17, Residential Aged Care Facilities, applies to the proposal and is a specific provision for RACFs.
2. The purpose of clause 53.17 is:

To facilitate the development of well-designed residential aged care facilities to meet existing and future needs.

To recognise that residential aged care facilities have a different scale and built form to the surrounding neighbourhood.

To ensure residential aged care facilities do not unreasonably impact on the amenity of adjoining dwellings.

1. Clause 53.17 has a set of requirements which generally relate to built form including height, setbacks and off site amenity impacts.
2. Decision Guidelines at clause 53.17-4 are:

* The Municipal Planning Strategy and the Planning Policy Framework.
* How the proposed development responds to the site and context description.
* Where the requirements of this clause are not met, the impact on the amenity of the adjoining dwellings.

1. Clause 65 of the Scheme is also applicable and includes a range of decision guidelines which I have had regard to but again, do not recite here. This clause sets out that the role of the decision maker is to decide whether the proposal will produce acceptable outcomes based on the decision guidelines within it.
2. Clause 71.02-3 also requires that decision makers need to integrate policy and that competing objectives need to be balanced in favour of net community benefit.

### What are my findings on the planning context?

1. The Council said that the site is appropriate, in principle, for an RACF based on the fact it has previously issued a planning permit for a not dissimilar (but lower in height) proposal for an RACF and based on the use being a section 1 use in the zone.
2. The council says that this is a case of whether the built form is appropriate having regard to the competing Scheme content of both policy and the NRZ requiring acceptable character outcomes, against clause 53.17 and policy support for RACFs.
3. The council conceded that the Scheme acknowledges RACFs will be bigger than dwellings with reference to clause 53.17 and clause 16.07-1S. It submitted that on first glance, a Warrigal Road location might give the impression of a more robust location but that the planning controls paint a different picture, particularly with reference to the NRZ.
4. It also said the proposal is unacceptable in its context having regard to the heritage overlay on land on the south side of Allen Street.
5. There is no dispute between the parties regarding applicable policy and that the provisions of the NRZ and clause 53.17 apply. However, there is dispute between the council and applicant regarding the weight to be given to each and the resulting built form. This is really the heart of this case.
6. The Council submitted that clause 53.17 means that character has a lesser role in the exercising of discretion, given the way it references a development being required to be responsive to its site and context, rather than to the existing or a preferred character. But it also submitted that neighbourhood character is a consideration “through the prism of policy and clause 53.17” and that neighbourhood character considerations are not “turned off” by clause 53.17.
7. The council said that the requirements of clause 53.17 are in addition to the zone provisions, not in place of them and that clause 53.17 sets out requirements and that where there is conflict between requirements in other parts of the Scheme, those in clause 53.17 prevail. There was no dispute about this approach. However, the Council also said that this clause does not otherwise disregard policy, the NRZ and applicable schedules.
8. The council also said that it would be wrong for the Tribunal to place too much emphasis on clause 22.01 (Residential Development and Character Policy). I agree and find that whilst this clause applies to all residential land, the preferred future character statement for Precinct A only applies to the three lots fronting Warrigal Road. The parcel at 1-9 Allen Street is not contained within any Precinct under this policy. This means that whilst the objectives at clause 22.01-2 and policy at clause 22.01-3 apply to the entirety of the proposal, the future preferred character statement under clause 22.01-4 does not apply to the Allen Street land.
9. I agree with the council that placing a greater deal of weight on clause 22.01 would not be the correct approach considering the lack of reference to character in clauses 16.01-7S and 53.17.
10. The applicant took me to clause 21.04-1, under the heading ‘New residential development’ which sets out the following:

There is an increasing demand for a variety of different housing styles to cater for changing household sizes and structures. State Government policy encourages higher housing densities near transport hubs and activity centres, such as Glen Waverley and Oakleigh.

Retention of neighbourhood character in residential areas will be enhanced by the identification of preferred areas for medium to high rise residential development within the municipality. These areas are generally within the Principal and Major Activity Centres.

In other areas new residential development will generally be low rise. The exceptions will be where there is an approved Structure Plan, or other planning mechanism in place or where individual circumstances support an alternative height.

1. The above extract highlights that exception to low-rise form can occur where there is a particular mechanism in place such as clause 53.17.
2. Local policy at clauses 21 and 22 has an emphasis on development being respectful of existing character and enhancing the garden character.
3. Other clauses give emphasis on RACFs responding to their context but within the realms of acknowledgement that their form will also be different.
4. Both clause 16.01-7S and 53.17 emphasise that RACFs must respond to their site and context.
5. The Applicant also took me to the case of *Japara[[7]](#footnote-7)*. This case dealt with the perceived conflict between local policy specific in that case, and clause 53.17 and PPF clauses for RACFs.
6. At paragraphs 32 to 38, the Tribunal undertook an analysis of the local planning matrix and how it did not fit well with the provisions for RACFs.
7. It set out that the whilst the conflict may not be intentional, there is intention in the significant policy setting for facilitating RACFs and therefore this setting must be afforded significant weight. It also set out that the requirements of clause 53.17 must be applied to the developments size and appearance irrespective of conflict with other policy but in its physical context, rather than any character based assessment.
8. The Scheme seeks to give greater consideration to recognising that RACFs will have a different built form than what might exist in the surrounding area. I do not find that that means clause 53.17 replaces character considerations, rather, diminishes the weight to be given to character policy. It also means that the purpose of the NRZ and NRZ Schedules are not redundant but they are relegated in the policy hierarchy for RACFs, in preference to clause 16 and 53.17 which both have specific recognition of what is to be expected with RACF built form outcomes.
9. Clause 53.17 makes no reference to neighbourhood character or residential policy like clause 55[[8]](#footnote-8) does.
10. I agree with the council that clause 53.17 and the NRZ, NRZ2 and NRZ3 are all relevant.
11. However, given the emphasis in clause 53.17 and in the PPF for RACFs, as well as recognition that such facilities must respond to their context and that they will take on a greater built form appearance, I give less weight to the zone and zone schedules and any existing or preferred neighbourhood character. This will result in different character outcomes than what policy seeks in terms of character, than if, say, for example, this were a residential development.
12. At a high level, the use of the word ‘facilitate’ in the Scheme[[9]](#footnote-9) for such facilities indicates that there is broad support for them and considerable weight must be given to policies and provisions which relate to RACFs.
13. In arriving at my decision, I have given significant weight to the specific policy and clause 53.17 which seek to facilitate RACFs. In doing so, I find that there is significant Scheme support for the proposal, coupled with the physical context of the review site. As such, expectations of the built form outcome on the site must be tempered. Indeed, there is recognition that the built form associated with such facilities is expected to be different from that of the other forms of residential development and that a contrast is acceptable.

## is the proposal an acceptable response to its context?

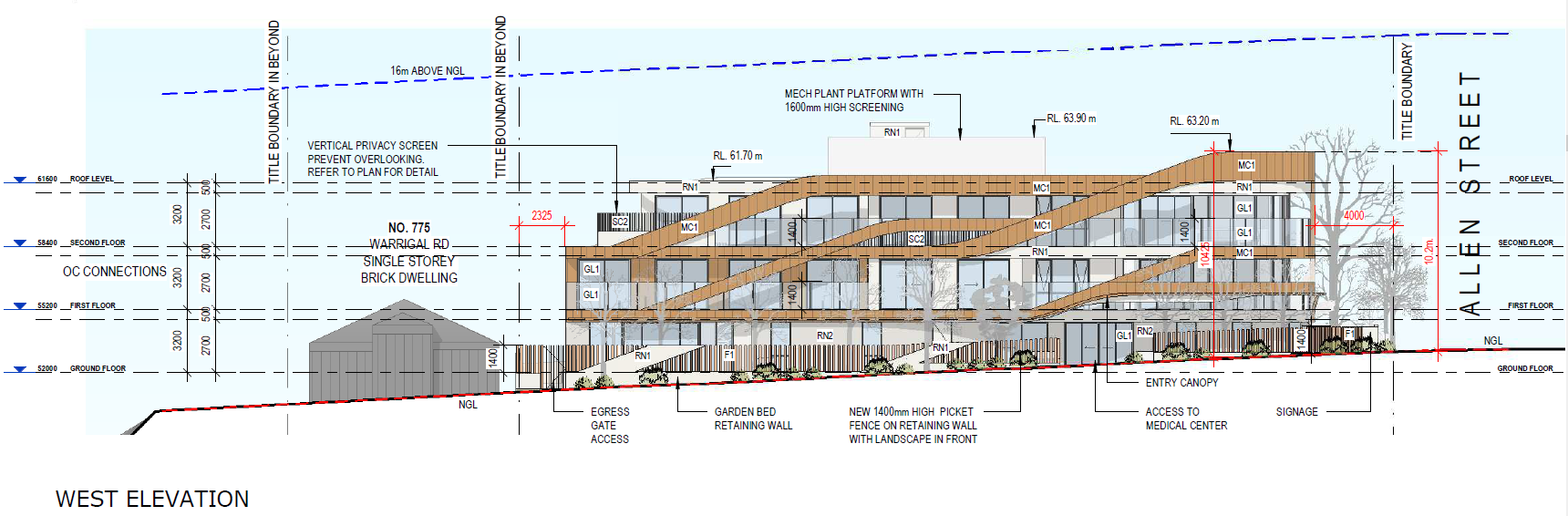
1. Although I have found that a differing built form from that which exists or is sought for a particular area is, in principle, acceptable, this does not constitute a ‘free kick’ for the form of these facilities. Clause 53.17 and clause 16.07-1S still require the design of RACFs to be responsive to the site and context.
2. The council said that the context of the site with its longest frontage opposite a heritage precinct to the south and adjoining public open space to the east, provides a unique and sensitive context and one which the proposal has failed to adequately address through the proposed design.
3. In particular, the Council raised the following specific concerns:

* The massing of the 3 to 3.5 storey wall facing the open space to the east was substantial and the setbacks proposed in this location were insufficient. Greater setbacks for improved height transition and more substantial landscaping were required.
* There has been no attempt to integrate the proposal within the streetscape, with dominant massing and resultant visual impact on the existing and preferred character.
* The continuous built form and mass along the Allen Street frontage being inappropriate opposite a heritage precinct.
* Insufficient areas within which to provide a landscape outcome that advances the Garden City Character called for by the Scheme.

1. The respondent echoed some of the concerns of the Council, including the extent of the built form across the site with no visible breaks and that the proposal presents a significant departure from the character of existing built form in the area.
2. I find that the proposal presents an acceptable built form response to the public realm context. I now turn to each of these interfaces setting out my reasons and then separately deal with the impacts to adjoining properties in the following section.

### Warrigal Road

1. The proposed setback at ground floor level of the proposal is a minimum of 7.9 metres to the Warrigal Road frontage at the northern end of the building and this increases to approximately 9.5 metres at the southern end.
2. Setbacks of the upper floors generally increase from the level below to the Warrigal Road frontage, although there is a central section at first floor level which remains in line with the façade below.
3. The northern section of the building towards the Warrigal Road frontage proposes a sheer two storey scale wall to the north elevation at a setback of 2.325 metres, with the top floor then setback 6.165 metres. This results in a stepping of the upper level as would be seen from Warrigal Road. There is a balcony with balustrade within this tope floor setback, with the balustrade proposed of metal battens at a setback of 3.945 metres from the north boundary.



1. The design detail also proposes timber-look cladding to the west elevation, arranged, in part, in a diagonal manner, raking down towards the north boundary. This complements the stepping of the northern edge of the west elevation to provide a sense of recession and transition to the north, when viewed from Warrigal Road. Any amendments made in response to the issues I have identified below with respect to side and rear setbacks and also daylight impacts will only enhance this.
2. Warrigal Road, in this location, has three lanes of traffic in each direction with a concrete median and narrow nature strips. Although the scale of built form in this immediate vicinity is not particularly great, I find that the Warrigal Road environs provides a more robust setting. The proposed built form will not sit uncomfortably in the context of the Warrigal Road frontage. I find this for the following reasons.
3. The setbacks provided to each level from the frontage vary, and whilst not exactly matching that of the adjoining dwelling to the north, there is nothing prescriptive in the Scheme to require this to occur. This adjoining dwelling is setback approximately 9 metres from Warrigal Road and the proposed ground floor front setback of between 7.9 metres and 9.5 metres is not dissimilar.
4. Upper levels are generally set back from the respective floor below. This provides vertical articulation and each level also includes varying front setbacks which provide horizontal articulation.
5. The south-western corner also features a rounded form, rather than a more harsh squared corner edge which helps to soften this interface.
6. The combination of the raking diagonal feature strips clad with timber look material, mix of other materials including render and steel battens and the rounded south western corner provide visual interest to the west elevation which help to break up the mass and bulk of the three storey presentation.
7. Multi storey aged care facilities can often have a rather bland and bulky appearance but I find that this proposal is anything but.
8. The minimum setback of 7.9 metres also provides ample space within which to provide landscaping, including canopy trees.
9. Although the scale is three storey in an otherwise mixed but predominantly single storey streetscape, the attention to the design of the west elevation has achieved an outcome which will not be unacceptable in this more robust location. The combination of varied setbacks to each level, the horizontal articulation, setbacks from the northern boundary and materials proposed all combine to help break up the level of mass presented to the Warrigal Road frontage.
10. The setback to Warrigal Road also offers opportunity for significant landscaping, including large canopy trees and understorey planting which will help soften the built form appearance.
11. For these reasons, I find the proposal will be acceptable to the Warrigal Road frontage.

### Allen Street

1. The Allen Street frontage is a significant length at approximately 150 metres. Whilst this presents an opportunity due to the consolidated sites and the large frontage of the Allen Street parcel itself, the built form must still be responsive to its context.
2. Indeed, similar to the other elevations, the south elevation fronting Allen Street maintains the design language of those other elevations, including materials, raking diagonal sections, materials and colours.
3. Clause 53.17 requires a front setback to Allen Street of at least 4 metres and setbacks to Warrigal Road of 2 metres, in the case where the building was considered to have its side setback orientated to Warrigal Road. If it were considered that the building was also fronting Warrigal Road due to the medical centre having its main entrance to Warrigal Road, then a setback of 4 metres is required.
4. The building is proposed to be setback between 4.3 metres and 6 metres to the Allen Street frontage at ground floor level, with generally greater setbacks at the upper levels. There are some points where the upper levels have the same setbacks as the respective floors below, but for small lengths of the building.
5. The ground floor also includes a semi-circular driveway for pick-up and drop-off purposes, which is adjacent to the main entrance to the facility. This section is further recessed with a setback of 8 metres from the frontage. This recess is essentially replicated at all levels above also.
6. Although the extent of the built form might, on the face of it, be seen as a rather confronting expanse for almost the entire length of the Allen Street frontage, I find that the proposal is an acceptable response.
7. The 1-9 Allen Street parcel was formerly part of the respondent’s land and operations. It previously contained a non-residential building, albeit single storey in scale.
8. Allen Street is a particularly wide street, with 90 degree parking spaces in the central part and generously wide nature strips on either side of the road pavement.
9. I am satisfied that the proposed built form is an acceptable response to this context for the following reasons:

* The width of the street, coupled with the proposed setbacks will ensure that the scale and siting of the proposed building will not have an unacceptable impact upon the heritage precinct on the south side of Allen Street. The built form of the proposal will be a considerable distance from the frontage of the properties within the heritage precinct and the street width provides a significant separation between each side of the street. This provides a distinction between the review site and the heritage precinct which will allow each to be used in their respective contexts.
* The proposed building displays an acceptable degree of articulation of the built form through the use of recesses, balconies, setbacks from the frontage and setbacks of the upper floors from the ground floor.
* The combination of materials proposed, articulation across the façade and ability to provide two significant areas of landscaping in front of the building will also ameliorate the impact of the built form within the streetscape as well as from the heritage precinct opposite.

1. The policy setting of the proposal contemplates a different form of development than what would otherwise be expected. There will be a difference but a double storey with recessed third level for the majority of this frontage, will be an acceptable response in this residential context, including for the reasons I have set out above.

### Interface to the east

1. Clause 53.17 includes side and rear setback requirements that should be met.
2. Parts of the first floor east elevation do not meet these setback requirements in the north-west section of the building, adjacent to 775 Warrigal Road.
3. The decision guidelines of clause 53.17 set out that where the requirements of this clause are not met, the impact on the amenity of adjoining dwellings must be considered.
4. As the property to the east is public open space and does not contain a dwelling, these requirements are less relevant. What is more relevant, is what the built form impact upon this public open space will be in a more general sense, having regard to other policy within the Scheme that requires the proposal to respond to its context and the NRZ2 which applies to this portion of the review site.
5. The context of this interface is undoubtedly the creek abuttal and interface with the public open space, which has varying degrees of vegetation cover.
6. The NRZ2 objectives and the context of this part of the review site go hand-in-hand. They seek visual dominance of landscaping, transition of scale down towards the creek and seek that development respond to the character of the creek corridor.
7. The lower ground floor is proposed to be setback 6 metres from the eastern boundary. A landscape plan was submitted which indicates that this is ample room within which to plant both canopy and understorey species within this setback. The landscape plan shows differing species of canopy trees of heights between 12 and 20 metres in height could be accommodated along the eastern boundary.
8. I find that this more than adequate space along the eastern boundary of the review site within which to provide a dominant landscape outcome, where species indicated could grow well above the proposed wall heights of the eastern elevation of the proposed building. This is consistent with the landscape context of this area and is consistent with the NRZ2 objectives.
9. In terms of the built form presentation to the east, this part of the review site has a relatively steep slope. I find that the proposal has not adequately responded to this topographical condition. The proposal, at 3-3.5 storeys high, elevated well above the public open space reserve abutting to the east, with sheer elements and expansive width will loom over this interface.
10. The built form of the three levels closest to the eastern boundary have similar setbacks to each other. Whilst the lower ground floor is setback 6 metres, the ground floor shares the same setback for most of its eastern façade and the first floor is setback an additional 1 metre.
11. I find that this does not provide an adequate transition down the slope of the site towards the creek environs and that a greater level of stepping of the built form is required. Modifications could be made to the design in order to address my concerns.
12. During the hearing, I questioned the applicant regarding any regulatory impacts[[10]](#footnote-10) such changes might cause but I was not made aware of any. Rather, the applicant advised that such changes could be made and that internal rearrangement would likely result but could be accommodated. I have therefore included conditions to require increasing setbacks to each respective level from the corresponding level below to achieve an acceptable response to the eastern interface.

## will there be any unacceptable off site amenity impacts?

### Impacts to 771-773 Warrigal Road - OC Connections centre

1. The respondent submitted that the proposal would have impacts to its land through the level of noise emitted from the proposed use and also from the visual bulk associated with the proposed built form.
2. Specifically in relation to the visual bulk impact, the respondent submitted that clients of the centre would be impacted due to their greater sensitivities and the extent of built form that would be visible. It was also submitted that the proposal will have visual bulk impacts on the staff break-out area in the south-east corner of the centre’s site.
3. The proposed building will be approximately 10 metres from the staff break-out area. I find that this is a considerable distance and even though the building may still be visible from this area, the distance and the nature of its use (as a staff break-out area rather than as, say secluded private open space associated with a dwelling) result in the extent of visual bulk impact acceptable.
4. In terms of the impact to the car park, I find that this is not an area of any particular sensitivity. It is a transitionary space for people parking vehicles and accessing other parts of the site and also as a drop-off zone for vehicles dropping off clients to the centre.
5. The active spaces used by the clients of the centre are also a considerable distance from the boundary with the review site. The respondent did not take me to any relevant part of the Scheme that stated adjoining land users with particular needs have any greater standing or that built form impacts need to be considered differently on that basis. The Activity areas on the centre’s land are considerable distance away from the review site, approximately 50 metres to the north-west. This is a considerable distance and whilst the building will still be visible from this area, the intervening distance and ability to landscape along the northern boundary of the review site will assist in ameliorating the built form impact.
6. For these reasons, I find that the proposal will result in acceptable outcomes to this property.

### Impacts to 775 Warrigal Road

1. The respondent submitted that the property at 775 Warrigal Road was used as a respite centre (dwelling) for clients of the OC Connections use. It submitted that there are habitable room windows along the southern elevation and an area at the rear of the building used as SPOS that the proposed building will impact upon. It said these impacts related to visual bulk to both features as well as impact on daylight of the existing habitable room windows.
2. Clause 53.17 addresses both of these aspects and includes requirements to be met for side setbacks as well as daylight to existing habitable room windows.
3. The north-western section of the proposal does not meet the respective requirements under clause 53.17 for side and rear setbacks as well as daylight. In particular, it is the first floor and the second floor[[11]](#footnote-11) elevations that both do not meet the requirements relating to side setbacks and daylight to habitable room windows. The below table sets out the proposed dimensions and requirements:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Level** | **Wall height[[12]](#footnote-12)** | **Side Setback Required** | **Side Setback Proposed** | **Complies?** | **Daylight setback Required** | **Complies** |
| Ground floor | 3.3m | 1.0m | 2.325 | Yes | 1.65m | Y |
| First Floor | 7.5m | 2.59m | 2.325 | **No** | 3.75m | **No** |
| Second Floor screen | 9.0m | 4.09m | 3.945m | **No** | 4.5m | **No** |
| Second Floor wall | 10.7m | 5.79m | 6.165 | Y | 5.35m | Y |

1. The site at 775 Warrigal Road has an area of private open space to its rear but which also incorporates a long access ramp, extending almost the full length of this space, between the existing dwelling and the rear fence. This area is not particularly large or expansive. Given the impacts from Warrigal Road, this area being on the opposite side of the dwelling to Warrigal Road provides the best area of SPOS for this dwelling.
2. Given the large size of the review site and the fact that the proposal does not meet clause 53.17 requirements with respect to its interface with an adjoining dwelling to the north, I see no reason why the proposal cannot and should not meet the requirements of clause 53.17 with respect to side and rear setbacks as well as daylight to existing windows. I have included conditions accordingly. This will ensure an acceptable level of amenity will be provided to this dwelling and its occupants.

## Are there any other issues?

1. The Council raised concerns with the functionality to be achieved between the proposed parking for the medical centre and the medical centre itself. It said that the parking proposed for the medical centre was to be located within the basement and furthest from the basement entry towards the western end of the car park, meaning patients and staff would be required to traverse almost the entire car park in order to access the medical centre parking spaces.
2. The Applicant said that eight car parking spaces are to be allocated to the medical centre at the western end of the car park and that the car park would be open during daytime hours. It submitted that only after the medical centre closed, would the basement car park be secured.
3. The proposed hours of operation of the medical centre are between 7:00am and 8:00pm seven days a week.
4. The proposed basement car park provides direct and dedicated lift access to the medical centre as well as stair access to the ground floor level whereby patients could access the main entrance also.
5. I am satisfied that the functionality of the proposed basement car park and medical centre can be addressed via conditions to require the basement car park to be identifiable and accessible during the operation hours of the medical centre.
6. Although the car parking spaces for the medical centre are furthest away from the basement entry, the layout of the car park is not complicated with one access aisle and one row of spaces on either side of the access aisle, with no significant changes of direction. Apart from the length of the access aisle at approximately 90 metres, there are no other aspects of the basement car park that would be problematic for users.
7. A condition can be imposed that requires appropriate signage to direct patients to the medical centre car park as well as the basement being required to be open/ungated during the medical centre operation hours.

## Conclusion

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

|  |  |  |
| --- | --- | --- |
| **Joel Templar**  **Member** |  |  |

# Appendix A – Permit Conditions

|  |  |
| --- | --- |
| Permit Application No | TPA/49990 |
| Land | 777-781 Warrigal Road and 1-9 Allen Street, Oakleigh |

|  |
| --- |
| What the permit allowS |
| In accordance with the endorsed plans:   * Construction of a residential aged care facility. * Use and development of the land for a medical centre. * Alteration of access to a road in a Road Zone Category 1. |

## Conditions

1. Before the development starts, one copy (electronic) of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. The submitted plans must clearly delineate and highlight any changes. When approved the plans will be endorsed and will then form part of the permit.

The plans must be generally in accordance with the plans prepared by Via Architects dated 9 August 2019, but modified to show:

* 1. The ground floor with a minimum setback of 7.5 metres from the eastern boundary, excluding the terrace balustrade.
  2. The first floor with a minimum setback of 9 metres from the eastern boundary, excluding the terrace balustrade.
  3. Any internal rearrangements as a result of conditions 1(a) and 1(b).
  4. Dimensions of wall heights to each level, including any balcony/terrace, balustrading/screening where the building is adjacent to 775 Warrigal Road.
  5. Compliance with the side and rear setback requirements of clause 53.17 where the building is adjacent to 775 Warrigal Road.
  6. Compliance with the daylight to existing windows requirements of clause 53.17 where the building is adjacent to 775 Warrigal Road.
  7. Section G-G amended to accurately reflect the balcony balustrade in section form, rather than elevation form.
  8. Details of signage in accordance with condition 5, including location, size and wording.
  9. Windows and balconies of rooms located within the western wing of the development orientated to the north-east screened in accordance with the requirements of clause 53.17.
  10. The location and dimension of all services and any required electricity substations, fire services, gas and water meters, suitable painted, screened and landscaped to the satisfaction of the Responsible Authority to minimize their visual prominence.
  11. The porte-cochere vehicle crossings perpendicular to the road and the porte-cochere area modified accordingly.
  12. The accessible spaces increased from 4.9 metres to 5.4 metres in length to meet the current Building Code of Australia requirements.
  13. Notation to read ‘any existing redundant crossings are to be removed and replaced with kerb and channel to the satisfaction of the responsible authority’.
  14. The area between car spaces 25 and 26 line marked to prevent vehicles parking in this area.
  15. A minimum accessway width of 1500mm (exclusive of the bicycle parking envelope) provided at the bicycle storage entrance.

All to the satisfaction of the Responsible Authority.

1. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
2. Once the development has commenced it must be continued and completed to the satisfaction of the Responsible Authority.
3. The medical centre must not operate outside the hours of 7:00am and 8:00pm on any day. Except with the written consent of the responsible authority.
4. The basement car park must remain open and ungated during the operation hours of the medical centre.
5. Signage must be placed at the entrance to the basement car park and within the basement car park directing users of the medical centre to the location of the designated car parking for the medical centre.
6. The amenity of the area must not be detrimentally affected by the use or development, through the:
   1. transport of materials, goods or commodities to or from the land;
   2. appearance of any building, works or materials;
   3. emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
   4. presence of vermin;
7. Concurrent with the endorsement of any plans, a Sustainable Management Plan (SMP) must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SMP to the satisfaction of the Responsible Authority. The report must include, but is not limited to, the following:
   1. Demonstration of how ‘best practice’ sustainability measures have been addressed, having regard to the relevant aspects of Clause 21.13 of the Planning Scheme.
   2. Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
   3. Document the means by which the appropriate target or performance is to be achieved.
   4. Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
   5. Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.
   6. Any relevant requirements of the Condition 1 sub-clauses hereof.

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.

1. Prior to the occupation any of the building approved under this permit, a report from the author of the endorsed Sustainable Management Plan (or similarly qualified person or company) must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that (in relation to the relevant completed stage of the building ready for occupation) all measures specified in the Sustainable Management Plan have been implemented in accordance with the approved plan.
2. All existing vegetation shown on the endorsed plans must be suitably marked before any development starts on the site and that vegetation must not be removed, destroyed or lopped without the written consent of the Responsible Authority.
3. 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.
4. No form of public address system may be installed so as to be audible from outside the site.
5. No goods must be stored or left exposed outside the building so as to be visible from any public road or thoroughfare.
6. 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.
7. Prior to the commencement of works on the site, the owner shall prepare a Waste Management Plan for the collection and disposal of garbage and recyclables for all uses on the site by private contractor. The Waste Management Plan shall provide for:
   1. The method of collection of garbage and recyclables for uses;
   2. Designation of methods of collection including the need to provide for private services;
   3. Appropriate areas of bin storage on site and areas for bin storage on collection days;
   4. Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas;
   5. Litter management.

A copy of this plan must be submitted to and approved by the Responsible Authority. Once approved the plan will be endorsed to form part of this permit.

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.
2. Prior to the commencement of any site works (including demolition and excavation), a Construction Management Plan must be submitted and approved by the Responsible Authority. No works are permitted to occur until the Plan has been endorsed by the Responsible Authority. Once endorsed, the construction management plan will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
   1. Hours for construction activity in accordance with any other condition of this permit;
   2. Measures to control noise, dust and water and sediment laden runoff;
   3. Prevention of silt or other pollutants from entering into the Responsible Authority’s underground drainage system or road network;
   4. Measures relating to removal of hazardous or dangerous material from the site, where applicable;
   5. A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
   6. Cleaning and maintaining surrounding road surfaces;
   7. A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that the Responsible Authority does not support the siting of site sheds within the Responsible Authority’s road reserves;
   8. Public Safety and site security;
   9. 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;
   10. A Traffic Management Plan showing truck routes to and from the site;
   11. 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;
   12. Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
   13. Contact details of key construction site staff;
   14. Any other relevant matters, including the requirements of VicRoads or Public Transport Victoria.
   15. A requirement that construction works must only be carried out during the following hours:
       1. Monday to Friday (inclusive) – 7.00am to 6.00pm;
       2. Saturday – 9.00am to 1.00pm;
       3. Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines).
3. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
4. Before the development permitted is completed, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
   1. constructed to the satisfaction of the Responsible Authority;
   2. properly formed to such levels that they can be used in accordance with the plans;
   3. surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
   4. drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;
   5. line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.

Parking areas and access lanes must be kept available for these purposes at all times.

1. The car parking layout of the development shall generally follow the Design Standards for car parking set out in Clause 52.06-8 of the Monash Planning Scheme to the satisfaction of the Responsible Authority.
2. 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 be generally in accordance with the plan by John Patrick Landscape Architects Pty Ltd dated August 2019, plan reference VCAT01, VCAT02 and VCAT03 and show the proposed landscape treatment of the site including:-
   1. The location of all existing trees and other vegetation to be retained on site.
   2. Provision of canopy trees with spreading crowns located throughout the site including the courtyard spaces within the development.
   3. Planting to soften the appearance of hard surface areas such as driveways and other paved areas.
   4. A schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material
   5. The location and details of all fencing.
   6. The extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
   7. Details of all proposed hard surface materials including pathways, patio or decked areas.
   8. Landscape treatment of the mounding within the Highbury Road frontage.

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

1. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.
2. The occupier of the premises must ensure that any noise emanating from the premises, during and post construction, must not exceed the standards of the State Environment Protection Policies No. N1 and must on request provide evidence to the Responsible Authority on compliance with the policies.
3. 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.
4. Before the development starts, a site layout plan drawn to scale and dimensioned must be approved by the Responsible Authority.
5. The plans must show 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.

The nominated point of discharge is the west of the property south-east corner of the property where the entire sites stormwater must be collected and free drained via a pipe to the Responsible Authority’s pit in the nature strip of the property to the satisfaction of the Responsible Authority.

If the point of discharge cannot be located then notify the Responsible Authority’s Engineering Department immediately.

1. 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.
2. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties. The on-site drainage system must prevent discharge from driveways onto the footpath. Such a system may include either:
   1. trench grates (150mm minimum internal width) located within the property; and/or
   2. shaping the driveway so that water is collected in a grated pit on the property: and/or
   3. another Responsible Authority approved equivalent.
3. The new vehicle crossing must be a minimum of 3.0 metres in width and constructed to the satisfaction of the Responsible Authority.
4. All new vehicle crossings 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.
5. The existing redundant crossings are to be removed and replaced with nature strip, kerb and channel to the satisfaction of the Responsible Authority.
6. Any works within the road reserve must ensure the footpath and nature strip are to be reinstated to the satisfaction of the Responsible Authority.
7. Engineering permits must be obtained for new or altered vehicle crossings and for new connections to the Responsible Authority’s pits and these works are to be inspected by the Responsible Authority’s Engineering Department. A refundable security deposit of $500 is to be paid prior to the drainage works commencing.
8. The loading and unloading of goods from vehicles must only be carried out on the land.
9. Deliveries to and from the site including the collection of waste must only take place between the following hours:
   1. 7:00am-6:00pm Monday to Saturday
   2. 8:00am – 3:00pm Sundays (food deliveries only).

### Vic Roads Conditions

1. Prior to the commencement of the use or occupation of the development, all disused or redundant vehicle crossings must be removed and the area reinstated to the satisfaction of the Responsible Authority and at no cost to VicRoads or the Responsible Authority.

End Vic Roads Conditions

### Expiry of permit for use & development

1. This permit as it relates to use will expire if the use does not commence within two (2) years after the issue date of 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.

1. This permit will expire if one of the following circumstances applies:
   1. The development is not started within two years of the issue date of this permit.
   2. The development is not completed within four years of the issue date of 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 periods referred to in this condition.

**– End of conditions –**

1. 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. [↑](#footnote-ref-1)
2. The submissions of the parties, any supporting exhibits given at the hearing and 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. [↑](#footnote-ref-2)
3. At clause 16.01-1S [↑](#footnote-ref-3)
4. At clause 19.02-1S [↑](#footnote-ref-4)
5. Except that in a heritage overlay. [↑](#footnote-ref-5)
6. 777, 779 and 781 Warrigal Road but not 1-9 Allen Street – 1-9 Allen Street is not in any identified precinct in clause 22.01. [↑](#footnote-ref-6)
7. *Japara Developments Pty Ltd v Knox CC* (Red Dot) [2019] VCAT 828 [↑](#footnote-ref-7)
8. At clauses 55.02-1 and 55.02-2. [↑](#footnote-ref-8)
9. Such as in clause 16.01-7S and clause 53.17. [↑](#footnote-ref-9)
10. Outside of planning considerations that might have influenced the design. [↑](#footnote-ref-10)
11. Balcony screen only. [↑](#footnote-ref-11)
12. Approximate, scaled from the plans. [↑](#footnote-ref-12)