VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P1573/2020  Permit Application no. TPA/51498 |
| CATCHWORDS | |
| Commercial 1 Zone, Design and Development Overlay, exceeding preferred height limit by one storey, reduced car parking provision | |

|  |  |
| --- | --- |
| **Applicant** | Goldman Johnson Pty Ltd |
| **Responsible Authority** | Monash City Council |

|  |  |
| --- | --- |
| SUBJECT LAND | 12-14 Johnson Street, Oakleigh |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 7 April 2021 |
| DATE OF ORDER | 6 May 2021 |
| CITATION | Goldman Johnson Pty Ltd v Monash CC [2021] VCAT 382 |

# Order

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

|  |  |
| --- | --- |
| * Prepared by: | Bruce Henderson Architects |
| * Drawing numbers: | TP203, TP204, TP205, TP206, TP207, TP208, TP209, TP210, TP211, TP301, TP302, TP303, TP304, TP305, TP401, TP402, TP600, TP601, TP700, TP701, TP702 All Revision 5 |
| * Dated: | 12 February 2021 |

1. The decision of the responsible authority is set aside.
2. In permit application TPA/51498 a permit is granted and directed to be issued for the land at 12-14 Johnson Street, Oakleigh in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

* Construction of a mixed use building for retail and office purposes and the reduction in standard car parking.

|  |  |  |
| --- | --- | --- |
| K Birtwistle  **Member** |  |  |

# Appearances

|  |  |
| --- | --- |
| For Goldman Johnson Pty Ltd | Mr J Gray, solicitor of Minter Ellison. He called the following expert witnesses:   * Ms C Dunstan, traffic engineer of Traffix Group * Ms J Bell, urban designer of Kinetica |
| For Monash City Council | Ms M Marshall, solicitor of Maddocks |

# Information

|  |  |
| --- | --- |
| Description of proposal | It is proposed to demolish all buildings on the land and construct a six storey building (23.2 metres in height) comprising two retail tenancies facing Johnson Street and five levels of offices with a total of 32 car spaces within a two-level car park (comprising a basement level and ground level parking). Vehicle access to the car park is provided via a double-width, two-way crossover to Mill Road near the site’s south-eastern boundary. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | Commercial 1 Zone (C1Z)  Design and Development Overlay – Schedule 11 (DDO11) |
| Permit requirements | Clause 34.01-4 – Buildings and works within the C1Z  Clause 43.02-2 – Buildings and works within the DDO11  Clause 52.06-3 – Reduction in standard car parking requirement |
| Land description | The site is located on the north east corner of Johnson Street and Mill Road, Oakleigh. The site is an amalgamation of four lots totalling approximately 900sqm with a frontage of 24.4 metres to Johnson Street and 36.6 metres to Mill Road. It is located at the south west corner of the Oakleigh Major Activity Centre. The site is currently developed with four single storey buildings all fronting Johnson Street, with vehicle access available via Mill Road.  To the north, at No. 8-10 Johnson Street is a two storey medical centre. The building is constructed to the northern and southern boundaries of the site, with a car park located to the rear of the site which is accessed via Haughton Road.  To the south is Mill Road which is a two-directional local road which allows for parking on both sides of the road.  On the opposite side of Mill Road (which is within a residential zone) are primarily residential dwellings, including a mixture of single and multi-unit developments.  Directly opposite the site is No. 16 Johnson Street which supports a single storey residential dwelling which fronts Johnson Street with vehicle access located to the rear of the site via Mill Road. High timber fencing is located along the Mill Road frontage.  South-west of the site (on the corner of Johnson Street and Mill Road) is the Sacred Heart Catholic Church and Primary School.  To the east at No. 2 Mill Road is a single storey building which is set back behind car parking fronting Mill Road. The property is currently used as a place of assembly.  To the west, the site abuts Johnson Street.  On the opposite side of the street is a public car park which is owned by VicTrack (southern portion of the land) and the City of Monash (northern portion of the land). This land is earmarked for future development. |
| Tribunal inspection | Unaccompanied subsequent to the hearing. |

# Reasons[[1]](#footnote-1)

## What is this proceeding about?

1. Goldman Johnson Pty Ltd (the applicant) proposes to develop a mixed use (retail and office use) multi-level (six storey) building at No. 12-14 Johnson Street, Oakleigh. On 28 August 2020, Monash City Council (the Council) determined to refuse to grant a planning permit for the proposed development. The permit applicant has requested the Tribunal to review Council’s decision.
2. The Council refused the proposal on the following grounds:

* The proposal does not provide for sufficient car parking on the site and fails to meet the objectives of Clause 52.06.
* The proposal fails to provide an appropriate interface to Mill Road in terms of height, scale, setbacks and massing.
* The proposal will result in unequitable development potential for the adjoining property to the east at 1 Mill Road Oakleigh.
* The proposal fails to provide for sufficient waste management on the site.

1. Prior to the commencement of the hearing, the applicant circulated amended plans in accordance with the Tribunal Practice Note PNPE9. Despite the amended plans, Council continues to maintain its opposition to the proposal. There being no objection, I allowed the amended plans to be substituted and these now form those on which my decision is reached.
2. The applicant says the proposal provides an acceptable number of car parking spaces; is appropriate in terms of height, scale, setbacks and massing, and provides an appropriate interface to Mill Road and Johnston Street; will not result in inequitable development potential for the abutting properties; and provides for adequate waste management.
3. Aspects of the proposal which are uncontentious include that the office and retail uses are appropriate land uses; that the proposal satisfies planning policy objectives that encourage the provision of office and retail development to meet community needs and provide for net community benefit; that the proposal presents as a high quality development with good urban design outcomes; and that sufficient car parking is provided for the retail use.
4. The principal issue in dispute is whether the particular design response (being a six storey building with reduced car parking) is appropriate based on the policy framework that applies to the site. A further related issue is whether the proposal will unreasonably constrain the development of the property to the east.
5. I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the Monash Planning Scheme, I have decided to set aside the decision of the responsible authority and direct that a permit be granted.
6. My detailed reasons follow.

## Is the proposal acceptable in its physical and strategic context?

### The Strategic Context

1. The Oakleigh Major Activity Centre (OMAC) is an under-developed centre requiring renewal. It is situated largely to the east of Warrigal Road, between Atherton Road and the Melbourne–Dandenong railway line and is one of the City of Monash’s principal activity centres. The centre core has a unique Victorian street grid pattern and village character.
2. The Planning Scheme, at Clause 21.15(Oakleigh Major Activity Centre Structure Plan) seeks amongst other matters, to provide a range of employment opportunities and services within this centre. It also seeks to achieve high quality built form and public realm design that conserves and enhances the valued urban character, and to encourage an appropriate mix of uses to support the economic and social sustainability of the centre.
3. The Structure Plan essentially provides for a central retail core grid which comprises the ‘old town’, the expanded town core and eastern fringe development opportunities. A ‘growth belt’ which forms a ‘U’ shape south of the central retail core, is then proposed which is to be characterised by higher forms with the greatest opportunity for development consolidation. The combination of these two elements is intended to establish a ‘basin’ in the central grid with taller forms at the edges, forming bookends along Warrigal Road and Hanover Street.
4. Transition areas will radiate out from the grid and growth precincts in all directions. These areas will step down in built form to a mostly three storey domestic format and scale.
5. The review site is zoned Commercial 1 (CZ1), the relevant purpose of which is to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses. DDO11 identifies the land as being located within Sub-Precinct 3C of ‘Precinct 3 – Commercial Periphery’ of the Oakleigh Major Activity Structure Plan. The relevant Design Objectives include (as relevant):

To ensure that the Oakleigh Major Activity Centre is developed in accordance with the preferred built form outcomes.

To encourage environmentally sustainable design in the Oakleigh Major Activity Centre.

To protect the economic viability of businesses by designing and constructing commercial premises to prevent unreasonable off-site amenity impacts on adjoining and nearby residential uses.

To ensure that new development contributes to safe and active streets.

1. DDO11 then goes on to specify the following precinct objectives for ‘Precinct 3:

Commercial Periphery:

To encourage the development of an appropriate mix of commercial and higher density residential uses in the Precinct, including the redevelopment of existing railway commuter car parks and the area above the railway line.

To encourage high quality, contemporary architecture that promotes the Oakleigh MAC.

To encourage urban design improvements that enhance the existing built form and the public realm.

To encourage an enhanced pedestrian environment within the Precinct that integrates with the surrounding Precincts, particularly Precinct 1 and the Oakleigh Railway Station and Bus Interchange area.

To preserve the southward view from the Warrigal Road overpass to the Sacred Heart Church.

1. DDO11 goes on to identify key design requirements that:

A building should not exceed the Preferred Building Height (in metres and storeys) specified in the built form precinct provisions of this Schedule unless particular site conditions warrant an alternative design response and that design response demonstrates a respect for, and significantly contributes to, the preferred character of the Oakleigh Major Activity Centre.

A building should be setback in accordance with the Setback requirements as specified in the built form precinct provisions of this Schedule.

Setbacks from rear and side boundaries should have regard to the nature of abutting uses and in particular respond to the potential impact on any sensitive use, including residential uses.

Development on land in a Business Zone that is adjacent to a Residential Zone should be designed to achieve a transition in height and building form.

Mechanical plant and/or equipment must be screened from view from the front street frontages and abutting properties.

Material and finishes should reinforce vertical articulation, stepped built form and the distinction between podium and upper levels.

Building with long continuous facades should be broken into smaller vertical sections using variation in wall articulation, window sizes, blank wall areas, materials, colours and textures

1. The DDO shows a variety of preferred heights for land within the OMAC.



1. For the review site, the following preferred height and building setbacks are:

* Zero street setback up to a façade height of 12 metres and then a 5 metre setback behind the façade above 12 metres height.
* Preferred building height up to 17.5 metres (five storeys).

1. Land to the west of the review site, on the opposite side of Johnson Street is located within Sub-Precinct 3A, which has a preferred height of eight storeys. Land to the south of the review site, on the opposite side of Mill Road, is also located within Sub-Precinct 3C, however has a preferred height of four storeys (14 metres).

### The physical context

1. The review site’s physical context is an important consideration in this case because the applicant’s submissions and evidence in support of this proposal are in large part predicated on the review site’s locational and physical attributes.
2. The review site is formed through the consolidation of four lots, located on a corner with 24.4 metre wide frontage to Johnson Street and 36.6 metre wide frontage to Mill Road. It abuts a two storey medical clinic to the north at No. 8-10 Johnson Street, which has a car park at the rear of the subject site. To its east it abuts a single storey commercial building at No. 1 Mill Road, with a car park built along most of the common boundary.
3. Mill Road, to the south of the site, is approximately 15 metres wide and separates the C1Z land on the north side of the road from the General Residential Zone – Schedule 5 (GRZ5) from land on the south side of Mill Road. Johnson Street, to the west of the site, is approximately 20 metres wide and to its west is a commuter car park.
4. The Oakleigh Central Shopping Centre is at the eastern end of Mill Road over the railway line. The Oakleigh Railway Station is at the northern end of Johnson Street.

### Parties’ positions

1. The central issue in dispute between the applicant and the Council is in relation to the height of the proposed development.
2. The proposal exceeds the preferred height within the DDO11 by one storey and 5.7 metres. DDO11 also prescribes a preferred setback of 5 metres from the podium of the upper levels. Variations are sought for both the Johnson Street and Mill Road interfaces. A setback of between 3.7 metres to 4.975 metres is proposed to Johnson Street. A setback of 4 metres to Mill Road is proposed.
3. The Council says that the DDO controls are nuanced and considered. It says that any departure from the preferred building height and setbacks will affect the integrity and ongoing effectiveness of such controls. It says that if the preferred height and setbacks as expressed in the DDO are to have integrity and achieve preferred character outcomes, they ought not be abandoned or exceeded lightly. It says that significant variances or even incremental creep can lead to a cumulative undermining of the overlay’s objectives.
4. While Council accepts that a permit can be granted to exceed the preferred maximum building height under DDO11, they say that the proposal fails to provide a compelling strategic basis for the magnitude of scale sought and why the design response should not reflect the built form envelope envisaged by the DDO11. It says the site does not present particular conditions to warrant a deviation from the Oakleigh Structure Plan with surrounding existing low scale buildings being typically single and double storey. It says that the DDO11 and the Oakleigh Structure Plan nominate a preferred height of five storeys with the view to ensuring new development adjoining residential areas will be sensitively designed so as to be compatible with those residential areas.
5. Council submits that the height of the building fails to provide an appropriate transition to the adjoining residential area to the south which has a maximum mandatory height of four storeys, or 14 metres for any residential building. It says that the additional storey sought, in combination with the setbacks proposed, fails to provide for an appropriate transition to this adjoining residential precinct.
6. Council does not oppose the reduced upper level setbacks to Johnson Street which has a commercial interface. However, it says that the interface to Mill Road is more sensitive, and policy seeks to provide a moderated interface to scale down to this residential area. It says that the preferred setback of 5 metres provides an appropriate transition to this interface, and also provides for a strong three storey form with recessed upper levels. It also says that the proposal relies on this a reduced (4 metre) setback to help mask the appearance of the sixth floor and on that basis is not supported.
7. The applicant asserts that the key aspect of the policy context is the site’s location within the OMAC. It says this is significant in terms of the guidance provided by the planning policy framework at a state and local level. Specifically, it says that the Planning Scheme encourages medium to high rise development (four to eight storeys) within the OMAC.
8. In support of the proposal, the applicant relies on the evidence of Ms Bell. Her evidence is that the proposed setback ensures that the upper levels will be appropriately distinguished and recessive from the street wall. Further, that the proposal will read as a five storey building from the footpath on the opposite side of Mill Road. In doing so, Ms Bell considers that the building will provide an appropriate transition to its preferred future character of four storeys and facilitates a stepping down of the building height to the sensitive residential land further south, in Mora Avenue and beyond.
9. It is the applicant’s submission, supported by the evidence of Ms Bell, that the departure from the preferred height nominated in the DDO11 is minor and there are special circumstances to justify a departure. Ms Bell identified the following matters as being relevant to her opinion that the exceedance above the preferred building height is acceptable:

* The site’s corner location, at an entry point into the OMAC.
* The use of colours and materials to distinguish between the street wall and upper level form.
* The limited extent of overshadowing of the footpath on the southern side of Mill Road.
* The degree of recession of Level 5 from the levels below.
* That the site is opposite land (at No. 1 Johnson Street to the west) where there is a preferred maximum height of eight storeys.

### What are my findings?

1. Both state and local policy encourage office development on the land given its location within an activity centre and an area that enjoys excellent access to public transport and other infrastructure and services (Clause 11.01-1R); and in order to support the growth, performance and amenity of activity centres and respond to community needs (Clauses 11.03-1S, 17.01-1S, 17.02-1S, and 21.04).
2. Based on the zoning and policy framework, the scale of development on this land, and surrounding land, is expected and encouraged to change. It will become more robust, with support for higher and more massed development with scale to the street. More broadly, land in the entire OMAC will experience a substantial level of change in terms of built form outcomes. This includes land within the GRZ (including land to the south of the review site) that is within the OMAC. Any reliance on the existing character of one to two storey form would therefore be misguided.
3. All parties agree that the DDO controls must not be read as mandatory controls. Where they are not mandatory requirements, there is discretion to grant a permit for a proposal that does not comply with these requirements if it results in an acceptable planning outcome having regard to the objectives of the DDO11 and the broader strategic and physical context of the land.
4. Council says that the preferred building heights should not lightly be departed from, as the proposal is one of the first emerging new developments at scale within this precinct of the OMAC.
5. The applicant says that the controls are not nuanced to the degree the Council assert, and that the built form provisions with respect to height and setback are preferred and not mandatory. It says if Council were so focused on individual site nuances, that the DDO11 would be written in that format.
6. While compliance with the requirements may achieve compliance with the objective, it does not follow that every instance of non-compliance with a requirement results in non-compliance with an objective. While the proposed building does not strictly comply with the nominated height and setbacks expressed in DDO11, I am satisfied that the proposal responds to the precinct objectives and guidelines of the DDO11, which is ultimately the relevant test.
7. In determining whether a building should exceed the preferred building height specified in the built form precinct provisions I am required to determine firstly, whether there are particular site conditions that warrant an alternative design response and secondly, that the design response demonstrates a respect for, and significantly contributes to, the preferred character of the Oakleigh Major Activity Centre.
8. With respect to the particular site characteristics, the land is located on the north side of Mill Road which is not the edge of the sub-precinct. Land opposite on Mill Road (although zoned GRZ5) is also within sub-precinct 3C and therefore expected to become more intensely developed to give effect to activity centre policy. The need to provide an appropriate transition to this land must therefore be understood in this context, and not in the context of the single to two storey development that currently exists.
9. The Council acknowledges that the proposal measures favourably against most of the general design objectives and requirements of the DDO, and I agree. The proposal will introduce a retail and office use into the periphery of the Activity Centre. The architecture is contemporary in form, and a verandah is proposed across both street frontages to enhance the pedestrian experience. One new crossover is proposed to Bank Street, whilst all other existing crossovers will be reinstated to increase on-street parking supply.
10. Whilst at six storeys it is one storey higher than the preferred height limit, I accept the submissions of the applicant that given the site’s location within the activity centre, where eight storey forms are anticipated on the western side of Johnson Street, and four storeys are anticipated on the southern side of Mill Road, that the proposed building would provide an acceptable transition to these precincts.
11. More broadly, in my view, visibility should not be an issue for an area where taller new built form is sought but rather the design of this built form. The proposal steps back the development at its upper level from both street interfaces. The design provides a human scale podium with legible setbacks between the podium and upper level of the development. The proposed street wall parapet is within 1.8 metres of the preferred scale sought in the policy.
12. The greatest immediate sensitivity is to the GRZ5 land to the south on Mill Road. However, this land is also located with the Commercial Periphery Precinct 3C of DDO11, where built form change is supported. With respect to preferred heights, Precinct 3C has a number of sub-areas, being:

* The triangular area of land between Haughton Rd, Mill Road and Johnson Street (in which the review site is located).
* 14 Mill Road & 24-28 Haughton Road.
* 19 Mora Avenue and 30-30A Haughton Road.
* 2-12 Mill Road and 16-20 Johnson Street.
* 1-17 Mora Avenue and 22-26 Johnson Street.

1. Each of these sub-areas are treated differently with respect to preferred performance measures. Pertinently, I agree with the applicant’s observations with respect to the review site that unlike all other sub-areas of Precinct 3C, there is no reference to an ‘envelope limit’; or the need to recess and step back from residential uses to provide a transition in built scale; nor the requirement to step back the upper levels based on any height to setback ratio. This distinction is relevant to my consideration.
2. On the basis that the Planning Scheme does not provide nuanced performance measures for determining acceptability in this sub-area of Precinct 3C, I am satisfied that the height and massing of the building are acceptable at the interface with the GRZ5 land to the south as the upper level façade is set back from Mill Road and there will be limited visibility of the upper floor when viewed from the footpath opposite the building. While oblique views of the upper level will be possible from the east, these will be largely lost if and when the adjacent site is redeveloped in accordance with policy.
3. In my view the design acknowledges and responds to the lower built form expectations of properties to the south while fulfilling the ambitions of the DDO11. The proposed recessing of the upper level towards the core of the OMAC also creates an appropriate transition to the higher built form which will emerge to the west of the land.
4. I am satisfied that Level 5 is appropriately recessed from the interface with the residentially zoned land opposite, being set back 8.1 metres from Mill Road, behind the 4 metre setback provided at Level 4. The additional height of the building also gives rise to no significant overshadowing impacts to the public realm.
5. With respect to the street wall height I am satisfied that that the proposed street wall provides a human scale and through its design and selection of materials reflects the preferred character of the area.
6. More broadly, I am satisfied that the proposal activates the ground floor interface with both streets through the introduction of the retail premises which wrap around the corner, extensive glazing, the location of primary pedestrian access from Johnson Street, vehicle access to the rear from Mill Road and car parking in the basement. It also provides all the back-of-house services way from the primary commercial frontage being Johnson Street. The proposal introduces an employment related use into an activity centre requiring renewal.
7. On this basis, I am satisfied that that the proposal demonstrates a respect for, and significantly contributes to, the preferred character of the OMAC.

## Will the proposal unreasonably constrain the development of the property to the east?

1. The building is proposed to be constructed at all levels to the eastern boundary with No. 1 Mill Road, with the exception of a light court at the first floor measuring 4.5 metres by 4.5 metres, and a setback at the sixth floor (level 5) from the eastern boundary of 2.7 metres. This setback is shown as a roof terrace. Council is concerned about the sixth floor roof terrace as they say this limits potential future development at No. 1 Mill Road given a fire rated wall will need to be provided at this level between the properties if No. 1 Mill Road is constructed to the same height. It says this will result in a poor development outcome as viewed from the street.

### What are my findings?

1. I am satisfied that the proposal will not unduly prejudice the ability of the site to the east (at No. 1 Mill Road) to be developed in accordance with the Planning Scheme provisions applying to it. The site is in an area identified for substantial change where a new built form character will be created. In this case I am of the view the response is successful in its balancing of both development intensification goals and the reasonable development expectations of the adjacent site at No. 1 Mill Road.
2. The substituted plans confirm that the roof deck is non-trafficable and therefore will not impact on the adjacent site, should a development of a similar scale be proposed. Where windows are located within 4.5 metres of No. 1 Mill Road (at Level 5), these are obscured to a height of 1.7 metres and therefore potential overlooking is managed within the review site itself.

## Does the proposal make an acceptable provision for car parking?

1. Council opposes the proposal on the basis that it does not provide for sufficient car parking on the site and therefore fails to meet the objectives of Clause 52.06. It agrees that a reduced car parking rate for the retail component is acceptable. However, in relation to the office use, it considers that the reduction being sought is unacceptable. It says that office uses typically require long term parking and there are no such spaces within the vicinity of the site which could accommodate this overflow.
2. Council submits that if the building was reduced in height to achieve the preferred building height, this would result in a reduced office floor area of approximately 365 sq.m. and the total car parking spaces required would in turn be reduced.
3. The proposal generates a statutory car parking requirement of 97 spaces. The Substituted Plans provide a total of 32 car parking spaces (comprising 30 office spaces and two shop spaces), resulting in a shortfall of 58 offices spaces and seven shop spaces, being a total shortfall of 65 spaces. In relation to bicycle parking, the proposal is required to provide 15 bicycle spaces and 30 bicycle spaces are proposed.
4. The applicant relies on the evidence of Ms Dunstan, who supports the reduction in parking under Clause 52.06-7 on the basis of:

* the empirical assessment of car parking demands;
* the site being well served by public transport services, including Oakleigh Railway Station and an extensive number of bus services;
* the provision of a high level of bicycle parking in excess of the statutory rate and End-of-Trip facilities; and
* the site’s location within the OMAC.

1. Her opinion is that proposed parking reduction is unlikely to have a negative impact on the activity centre, and that the reduced provision of car parking will assist in reducing the traffic impacts of the development on the local and broader road network.
2. She says that staff without car parking are unlikely to drive to work using on-street parking given the local parking restrictions and inability to access parking permits.

### What are my findings?

1. The purpose of Clause 52.06 is defined in the Scheme as follows:

To ensure that car parking is provided in accordance with the State Planning Policy Framework and Local Planning Policy Framework.

To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.

To support sustainable transport alternatives to the motor car.

To promote the efficient use of car parking spaces through the consolidation of car parking facilities.

To ensure that car parking does not affect the amenity of the locality.

To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

1. Under the provision of Clause 52.06-7, the responsible authority is able to reduce the parking requirements (including reduced to zero), provided the applicant satisfies the responsible authority that the provision of car parking is justified on the basis of:

The car parking demand likely to be generated by the use,

Whether it is appropriate to allow fewer spaces to be provided than the number likely to be generated by the use.

1. Clause 52.06-7 sets out the factors to be considered when determining the appropriateness of allowing fewer car parking spaces to be provided. Some of the relevant factors for this case are listed below:

The Car Parking Demand Assessment;

Any relevant local planning policy or incorporated document;

The availability of alternative car parking in the locality of the land;

Access to or provision of alternative transport modes to and from the land; and

Any other relevant consideration.

1. There is a growing body of opinion that office accommodation is one sector in which the suppression of on-site parking supply can result in a genuine modal shift to alternative sustainable transport options, including public transport, ride share, walking and cycling. This would not be the case of all office uses, particularly in areas in which access to alternative transport modes may be more limited. However, in this instance the site is located within a transport-rich Major Activity Centre.
2. I agree with the decision (tendered) in *Ronge v Moreland CC (Red Dot)[[2]](#footnote-2)* that oversupplying parking, whether or not to comply with Clause 52.06, has the real potential to undermine the encouragement being given to reduce car based travel in favour of public transport, walking and cycling.
3. With respect to the proposed office use, I am satisfied that the proposal provides an acceptable amount of car parking in the context of sustainable transport policies and the site context. Reducing the supply of on-site car parking (below the statutory rate) for the proposed office use will encourage the use of alternative transport modes by staff.
4. The location of a high trip generating use in a highly accessible area, a reduced car parking provision and bicycle parking provision that well exceeds the standard requirement are all supported by policy that seeks to reduce the number of private motorised trips and improve access by walking, cycling and public transport[[3]](#footnote-3). The reduction sought is appropriate having regard to the excellent access to public transport available in this location, the extent of the provision of bicycle parking and end of trip facilities, and pedestrian and cycling connectivity to the land.
5. As the majority of on-street car parking in the vicinity of the site is subject to short term time restrictions, most staff who drive to the area (who are not provided with a car parking space on site) would be required to relocate their vehicles constantly throughout the day. This is a strong disincentive for staff without a parking space to drive to the office. These parking controls will act to discourage staff from driving to the site and encourage staff to use alternative transport options.
6. There are numerous public transport options that provide an attractive means of alternate transport for staff commuting to and from the site each day, and for visitors attending the site. In my view, these facilities will provide an attractive means of alternative sustainable transport that is likely to reduce future reliance on private motor vehicles for employees and visitors of the proposed development.
7. The proposal seeks to provide bike storage, lockers, three showers and change area. These facilities will encourage users to choose to travel to/from the site via active transport modes such as walking and cycling.
8. While the available public parking in the area of the site does not facilitate all day car parking typically associated with staff, it does provide for some short-term parking demand that may be generated by visitors to the site.
9. With respect to the two retail tenancies, I agree that customers to these premises can be expected to be drawn from people who will already be in the vicinity of the site, including existing residents and staff living and working in the surrounding area and future employees of the proposed development, and therefore would not necessarily generate a separate additional parking demand. On that basis I am satisfied that a reduced provision of car parking for the retail uses is also acceptable.

## other matters

1. The issue of waste management, which was a ground of Council’s refusal, is largely a matter of design detail. I am satisfied, based on the evidence of Ms Dunstan, that a waste collection vehicle will be able to move safely and efficiently within the site’s basement level and exit the site in a forward direction. Further, a condition contained on the permit will require the approval of a Waste Management Plan for the site.

## conclusion

1. I am satisfied that the proposal enjoys strong strategic support under the Planning Scheme, represents a well-designed development which responds positively to the land and its surrounds, including both streetscapes and the preferred character of the area; responds to the objectives of the DDO11; will not result in any unacceptable amenity impacts to nearby properties; and provides an acceptable provision of car parking and access, and will not result in any traffic impacts.
2. Having regard to the requirements of Clauses 65 and 71.02, I consider that the proposal is an acceptable outcome, and that when assessed against all relevant policies it does, on balance, achieve a net community benefit. The decision of the responsible authority is set aside, and a permit is granted.

|  |  |  |
| --- | --- | --- |
| K Birtwistle  **Member** |  |  |

# Appendix A – Permit Conditions

|  |  |
| --- | --- |
| Permit Application No: | TPA/51498 |
| Land: | 12-14 Johnson Street, Oakleigh |

|  |
| --- |
| What the permit allows |
| In accordance with the endorsed plans:   * Construction of a mixed use building for retail and office purposes and the reduction in standard car parking. |

## Conditions:

**Amended Plans Required**

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned. When the plans are endorsed they will then form part of the Permit. The plans must be generally in accordance with the plans prepared by Bruce Henderson Architects, dated 12 February 2021, Plan nos. TP-204 – TP-211, TP-301 – TP-305 and TP-401 – TP-402 but modified to show:
   1. A Waste Management Plan in accordance with Condition 4 of this Permit.
   2. A Sustainable Design Assessment to be prepared in accordance with Condition 8 of this Permit.

**Layout not to be Altered**

1. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
2. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

**Waste Management Plan**

1. Concurrent with the endorsement of any plans pursuant to Condition 1, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the plan prepared by RB Waste Consulting Service dated 12 February 2021, but showing to the satisfaction of the Responsible Authority:
   1. The purpose as stated in the City of Monash MUD and Commercial Developments WMP Guide for Applicants.
   2. Calculation method of waste generation to be described.
   3. Retail waste generation rate to assume seven days of trading (not five).
   4. Management of food waste recycling described.
   5. The management of separate glass recycling to be planned for and addressed.
   6. Inclusion of e-waste management details and provision within the waste storage area.
   7. Reference to the legislated ban to landfill for e-waste to inform the site operator and tenants of their obligations to prevent e-waste entering the garbage waste system.
   8. Bin colours.
   9. Reference to EPA guidelines and City of Monash Local Law for permitted waste collection hours.
   10. Further clarification of how waste is to be managed within tenancies.
   11. Detail of how cleaners will know how to handle waste correctly, and who will monitor this.
   12. A scale drawing to be included within the plan, showing bin storage areas, equipment and features, access routes, strategy for bin transfer and swept path analysis for collection vehicles.
2. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

**Green Travel Plan**

1. Before the development commences, a Green Travel Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Green Travel Plan will be endorsed and will form part of this permit. The Green Travel Plan must include, but not be limited to, the following:
   1. A description of the location in the context of alternative modes of transport.
   2. Details of end of trip facilities provided.
   3. Education and awareness initiatives and incentives for users of the building to encourage more sustainable modes of travel to/from the site.
   4. Management practices identifying sustainable transport alternatives.
   5. Consider the provision of electric vehicle charging facilities.
   6. Details of bicycle spaces for staff.
   7. Employee packs (ie myki cards for new workers).
   8. An obligation to update the plan not less than every five years.
   9. Details of when and how this travel plan will be available for new staff.
   10. Any other relevant matters.
2. The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

**Sustainable Design Assessment (SDA)**

1. Concurrent with the endorsement of any plans pursuant to Condition 1, an amended Sustainable Design Assessment to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Design Assessment will be endorsed and will form part of this permit. The amended Sustainable Design Assessment must be generally in accordance with the Sustainable Design Assessment prepared by SBE dated 17 July 2020 but modified to include or show:
   1. any requirements specified in Condition 1 of this Permit.
2. The provisions, recommendations and requirements of the endorsed Sustainable Design Assessment must be implemented and complied with to the satisfaction of the Responsible Authority.

**Construction Management Plan**

1. Prior to the commencement of any site works (including demolition and excavation), a Construction Management Plan must be submitted to 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 Council’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 Council does not support the siting of site sheds within Council 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-contractors/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. Except with the prior written consent of the Responsible Authority, 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)
       4. No works are permitted on Sundays or Public Holidays.
2. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

**Boundary Walls**

1. The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

**Ongoing Architect Involvement**

1. As part of the ongoing consultant team, Bruce Henderson Architects or an architectural firm which is acknowledged to have comparable skill and expertise to the satisfaction of the Responsible Authority must be engaged to:
   1. oversee design and construction of the development; and
   2. ensure the design quality and appearance of the development is realised as shown on the endorsed plans or otherwise to the satisfaction of the Responsible Authority.

**Plant / Equipment or features on roof**

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 except as shown on the plans endorsed pursuant to Condition 1 unless otherwise agreed to in writing by the Responsible Authority.

**Service Location**

1. Any required fire services, electricity supply, gas and water meter boxes must be discreetly located and/or screened to complement the development to the satisfaction of the Responsible Authority. Any required services must be clearly detailed on endorsed plans forming part of this permit.

**Hours for Waste Collection**

1. Waste collection only to be carried out within hours prescribed by EPA guidelines.

**No Waste Bin in View**

1. No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.

**Car Parking and Accessways**

1. Before the use starts or any building is occupied, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
   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. Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.

**Bike provision on public land**

1. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, two (2) bike racks must be installed in accordance with the endorsed plans:
   1. at the permit holder’s cost; and
   2. in a location and manner

to the satisfaction of the Responsible Authority.

**Drainage and Stormwater**

1. The site must be drained to the satisfaction of the Responsible Authority.
2. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
3. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing.
4. A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.
5. The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.

**Time for Starting and Completion**

1. In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
   1. The development is not started within three years from the date of issue.
   2. The development is not completed within five years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires; or

* 1. within six (6) months afterwards if the development has not commenced; or
  2. within twelve (12) months afterwards if the development has not been completed.

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

**- End of conditions -**

1. The submissions and evidence of the parties, any supporting exhibits provided to the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons. [↑](#footnote-ref-1)
2. [2017] VCAT 550 [↑](#footnote-ref-2)
3. As sought at Clauses 11.03-1S, 18.01-1S, 18.02-1R, 18.02-2S, 18.02-2R and 21.03 [↑](#footnote-ref-3)