

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2619/2016
PERMIT APPLICATION NO.TPA/46427

CATCHWORDS

Monash Planning Scheme; Commercial 1 Zone; Design and Development Overlay; Alteration of access to a main road; Dwellings, serviced apartments and retail uses; Two to ten storey buildings; Large consolidated site; Housing diversity; Substantial change area; Height; Visual bulk; Front setback and landscaping; Public access through the site; Equitable development opportunities; Internal amenity.

APPLICANT	Viapac Australia Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
REFERRAL AUTHORITIES	VicRoads South East Region Public Transport Victoria
RESPONDENTS	Dalgety and Surrounds Residents Group NTZ Pty Ltd
SUBJECT LAND	807-811 Warrigal Road and 1513-1517 Dandenong Road OAKLEIGH VIC 3166
WHERE HELD	Melbourne
BEFORE	G Rundell, Presiding Member P Gaschk Member
HEARING TYPE	Hearing
DATE OF HEARING	22-24 May 2017
DATE OF ORDER	29 June 2017
CITATION	Viapac Australia Pty Ltd v Monash CC [2017] VCAT 939

ORDER

- 1 Pursuant to section 127 and 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: Rothe Lowman Architects
 - Drawing numbers: TP00.00-TP00.02, TP01.00-TP01.22, TP02.01-TP02.06, TP03.01-TP03.04, TP04.05-TP04.12,

All Revision A, TP10.00 Revision B

- Dated: 20 April 2017

- 2 In application P2619/2016 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/46427 a permit is granted and directed to be issued for the land at 807-811 Warrigal Road and 1513-1517 Dandenong Road, Oakleigh in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Use of the land for accommodation (dwellings and serviced apartments) in a Commercial 1 Zone
 - Construction of buildings and works in a Commercial 1 Zone and Design and Development Overlay Schedule 10
 - Removal of an existing easement (Easement E-1 on TP438575Q and Easement E-1 and E-2 on PS403162C) (clause 52.02)
 - Creation and alteration of access to a road in a Road Zone Category 1 (clause 52.29)

G Rundell
Presiding Member

P Gaschk
Member

APPEARANCES

For applicant

Mr John Cicero, solicitor, Best Hooper
Lawyers

He called the following witness:

- Mr Stuart McGurn, town planner, Urbis Pty Ltd
- Mr Andrew Biacsi, town planner, Contour Consultants Australia Pty Ltd
- Mr Mark Sheppard, architect and urban designer, David Lock Associates
- Ms Charmain Dunstan, traffic engineer, Traffix Group Pty Ltd
- Mr Michael Wright, landscape architect, Rush Wright Associates Pty Ltd

Evidence circulated by Mr Way Choong, architect and 3D Artist, Scharp Design Pty Ltd and Mr Jan Talacko, environmental scientist, Ark Resources Pty Ltd was accepted and they were not required to attend the hearing.

For responsible authority

Ms Maria Marshall, solicitor, Maddocks
Lawyers

She called the following witness:

- Mr Craig Czarny, urban designer, Hansen Partnership Pty Ltd

For referral authorities

Did not attend

For respondents

Mr Nick Crawford, Barrister, represented NTZ
Pty Ltd, direct instruct

Dalgety and Surrounds Residents Group did
not attend

INFORMATION

Description of proposal	<p>To use the land for accommodation comprising 260 dwellings and 106 serviced apartments.</p> <p>To construct three buildings that would accommodate the dwellings, serviced apartments, 2082 square metres of retail floor area in two retail tenancies and a food and drink premises.</p> <p>The development would include eight areas of communal open space and several indoor recreation rooms and function rooms at various levels.</p> <p>554 car parking spaces, 9 motorcycle parking spaces and 219 bicycle parking spaces would be provided in three basements. The basements would be accessed from Dandenong Road (one entry) and Dalgety Street (two entries).</p> <p>Two loading bays would be provided, both accessed from Warrigal Road.</p> <p>The buildings would have heights of two to five storeys (Dalgety Street), five storeys (Warrigal Road) and ten storeys (Dandenong Road), with a maximum height of 33 metres.</p>
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. ¹
Planning scheme	Monash Planning Scheme
Zone and overlays	Commercial 1 Zone Design and Development Overlay Schedule 10 Environmental Audit Overlay Abuts a Main Road Zone Category 1

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.

Permit requirements	<p>Clause 34.01-1 (use of land for accommodation in the C1Z where the ground floor frontage exceeds 2 metres)</p> <p>Clause 34.01-4 (buildings and works in C1Z)</p> <p>Clause 43.02-2 (buildings and works on a lot in DDO10)</p> <p>Clause 52.02 (to vary or remove an easement)</p> <p>Clause 52.29 (create or alter access to a Road Zone Category 1)</p>
Relevant scheme policies and provisions	<p>Clauses 9, 10.04, 11.01, 11.06, 13.01, 15.01, 15.02, 16.01, 17.01, 18.01, 18.02, 21.01, 21.02, 21.03, 21.04, 21.05, 21.06, 21.07, 21.08, 21.10, 21.11, 21.12, 21.13, 21.14, 21.15, 22.03, 22.04, 22.13, 34.01, 43.02, 52.02, 52.06, 52.07, 52.29, 52.34, 52.36 and 65</p>

Land description

The review site comprises three lots and is “L” shaped, with boundaries to Dandenong Road to the south, Warrigal Road to the west and Dalgety Street to the north.

It has a frontage to Dandenong Road of 50.58 metres, a frontage to Warrigal Road of 46.05 metres and a frontage to Dalgety Street of 133.88 metres. It has an approximate area of 9605 square metres.

The land falls approximately 3 metres from west to east and 1.6 metres from south to north. It is not constrained by any easements.

The site is occupied by three, single storey, commercial styled buildings and associated car parking. Three businesses operate separately. Access to each site is from separate crossovers from Dandenong Road and Dalgety Street.

The adjoining sites are used for various commercial businesses including fast food, motor repairs and a petrol station/motor repairs/car wash. Two, six and seven storey apartment buildings have been constructed on sites to the east of the review site.

The site is within 400 metres of the Oakleigh major activity centre and one kilometre to Chadstone shopping centre.

Bus services operate along Warrigal Road and Dandenong Road. Oakleigh train station adjoins the activity centre.

Tribunal inspection

We inspected the site and its environs on 31 May 2017. The parties did not accompany the inspection.

REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 Viapac Australia Pty Ltd (the applicant) proposes a mixed use development comprising dwellings, serviced apartments, retail floor space and a food and drink premises. The responsible authority (the Council) failed to determine the matter in the statutory period and the applicant has requested the Tribunal to determine the application.
- 2 The original application lodged with the Council comprised a seventeen storey building and other smaller buildings. Had it been able, the responsible authority would have refused the application on the following grounds:
 - The proposed development is excessive in building height, scale and massing having regard to the surrounding context and applicable policy.
 - The proposal is inconsistent with the objectives and requirements of Design and Development Overlay Schedule 10.
 - The development would have a poor level of amenity for future residents.
 - The proposal would have a detrimental impact on the amenity and development of the surrounding land.
- 3 The applicant circulated amended plans that reduce the maximum height of the development to ten storeys. Having considered the amended plans, the Council determined that had it been able, it would have issued a Notice of Decision to Grant a permit with conditions. These would have required the height of Building C to be reduced to eight storeys and other design changes.
- 4 The Council determined that the amended proposal would generally comply with its housing strategic framework, as this area is identified for substantial residential development. It also determined that the development would generally provide acceptable amenity to its future residents and it provides for the equitable development of adjoining lots.
- 5 VicRoads is a referral authority with regard to the access to Dandenong Road and Warrigal Road. Public Transport Victoria is a referral authority with regard to public transport services near the site. They have no objections to the proposed development subject to conditions. The Council has no objections to the amended proposal with regard to traffic and parking matters.

² The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

- 6 NTZ Pty Ltd owns the adjoining site to the east that is used for a petrol filling station, mechanics repair shop, kebab outlet and car wash. NTZ Pty Ltd operates the mechanics repair shop. It primarily opposes Building C that faces Dandenong Road because it says it would obscure a pole sign that is located near the shared boundary. It also says the development would generate conflicts between vehicles entering and leaving the two sites due to the proximity of the crossovers. It was also concerned with the lack of boulevard type canopy tree planting along Dandenong Road.
- 7 The Dalgety and Surrounds Residents Group opposes the development on the grounds of excessive visual bulk, traffic and parking.
- 8 The applicant says the development would provide greater housing choice and affordability in an area where substantial residential change is encouraged by planning policy. It says the proposal would fit into the emerging character of the area and would provide acceptable amenity to neighbours and future residents. It says the development would not cause traffic or parking problems.

WHAT ARE THE KEY ISSUES?

- 9 In light of the submissions and evidence, we must determine the following key issues in this matter:
 - Is the development generally acceptable having regard to its built form and policy contexts?
 - Should Building C be reduced to eight storeys and its setback to Dandenong Road increased?
 - Should the north elevations of Building A be amended to reduce visual bulk?
 - Should the development include a north-south walkway that would be open to the public and the sky?
 - Would the development provide acceptable amenity for its residents?
 - Would the development provide equitable development opportunities for adjoining land?
 - Does the development set a precedent for excessive development on other lots?
 - Would the traffic, car parking and loading arrangements be acceptable?
- 10 To the extent that other issues are raised by the respondents in their statement of grounds, we consider these matters are peripheral to the key issues in this case and do not require specific consideration in making this decision.
- 11 Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the Monash Planning Scheme, at

the conclusion of the hearing we ordered that the decision of the responsible authority be set aside and a permit be granted for the development. We reserved our decision in respect of the conditions that we would include on the permit. We advised that we would not include conditions that require a pedestrian link through the site (open to the public and the sky), or increased setbacks to the north facing upper storeys of Building A.

- 12 We provide our reasons for that decision and the permit conditions that are to be applied.

PROCEDURAL ISSUES AND RULINGS

- 13 The Applicant has circulated amended plans in accordance with Practice Note PNPE9. The responsible authority and NTZ Pty Ltd had no objection to the substitution of the amended plans. We ordered at the Hearing the plans prepared by Rothe Lowman Architects, described as Revision A and dated 20 April 2017 be the decision plans for this review.

CONSIDERATION OF THE KEY ISSUES

Is the development generally acceptable having regard to its built form and policy contexts?

- 14 We agree with the parties and the experts that the review site is relatively unconstrained and is a significant redevelopment site. It is large, as it comprises three titles that together have an area of 9605 square metres. It comprises approximately half of a small precinct that is bound by Dandenong Road, Warrigal Road, Dalgety Street and Drummond Street.
- 15 It has frontages to Warrigal Road, Dandenong Road and Dalgety Street that provide multiple opportunities for vehicle access, including heavier vehicles that need access to loading facilities.
- 16 It has a fall of some three metres from Dandenong Road to its eastern boundary, and it falls approximately one metre from Dandenong Road to Dalgety Street. These slopes are modest and do not limit the design of a new development.
- 17 The site is occupied by three, single storey, robust, “fit for purpose” commercial buildings. They each have associated (albeit limited) landscaping and car parking. The buildings and landscaping are utilitarian in appearance and have no value in terms of heritage fabric, prevailing neighbourhood character or landscape value.
- 18 The site is within a robust commercial precinct. The abutting sites facing Dandenong Road are occupied by a fast food premises to the west and a petrol filling station to the east. The land on the corner of Dandenong Road and Warrigal Road is occupied by a tyre repair business, located in a single storey commercial building. The adjoining property to the east facing Dalgety Street is occupied by a fitness centre located in a single storey commercial building.

- 19 The precinct is changing, particularly its land uses, building types and their heights. Old single storey dwellings and commercial buildings are being replaced with a seven-storey apartment building on the northeast corner of Dandenong Road and Drummond Street, east of the petrol station that is near completion. A six storey apartment building is under construction at No. 83 Dalgety Street, abutting to the east of the petrol station. Another five storey apartment building has been approved on the southwest corner of Drummond Street and Dalgety Street.
- 20 The south side of Dandenong Road, opposite the review site, comprises a mix of utilitarian one and two storey commercial buildings that are occupied by a mix of large floor area retail businesses, fast food outlets and a petrol station. A four storey serviced hotel is on the southwest corner of the two roads. The west side of Warrigal Road includes a church and three and four storey apartment buildings. Both Warrigal Road and Dandenong Road are very wide and carry high volumes of traffic.
- 21 The site is well located to services and amenities. Buses operate along both Dandenong Road and Warrigal Road, and a bus stop is adjacent to the site in Dandenong Road. Oakleigh train station and the major activity centre is a 7 to 10 minute walk south of Dandenong Road. Chadstone shopping centre is approximately one kilometre to the west. The area is well serviced with schools, parks and other community facilities.
- 22 We think this context creates three possible constraints. The north side of Dalgety Street is developed with attractive dwellings, although they are separated from the site by a wide street with a well vegetated central median strip. Secondly, the site is subject to high noise levels from traffic on the main roads. Thirdly, the fast food premises and the petrol station present challenges both in terms of possible amenity impacts for sensitive uses that may arise from their current operations, and in terms of ensuring equitable development opportunities should they also be redeveloped.
- 23 We note the responsible authority now supports the proposed redevelopment of the site, and its concerns principally relate to the height and massing of the built form. We understand that NTV Pty Ltd did not specifically say the development should be refused, but it seeks modifications to the built form to protect the businesses that are located on the petrol station site. It somewhat surprisingly also seeks additional boulevard type planting treatment along Dandenong Road, this being at odds with the very utilitarian appearance of its own site.
- 24 We understand that the Dalgety and Surrounds Residents Group generally opposes the development, and we understand its statement of grounds to mean the residential area north of Dalgety Street should be insulated from the changes that are underway.
- 25 The four planning and urban design experts before us (Mr Czarny, Mr Biacsi, Mr Sheppard and Mr McGurn) all agree that the site should be redeveloped for dwellings, shops and the hotel. They agree that the site and

the adjoining lots comprise a strategic redevelopment area described in *Plan Melbourne* and there is strong policy support for this type of change.

- 26 We agree with their advice and consider that the determinative matters that we must consider are not whether the site should be redeveloped or the mix of uses is acceptable, but whether the proposed height and massing and other built form design matters of detail are acceptable. We are satisfied that the planning policy framework clearly identifies this as a preferred location in the City of Monash for substantial residential development that enables the municipality to contribute to housing diversity and compact city objectives, while protecting the character and amenity of its established suburbs. We refer to the following policies of the Monash Planning Scheme to support our finding:
- The purpose of the Commercial 1 Zone to provide for residential uses at densities complementary to the role and scale of the commercial centre.
 - The purpose of DDO10 that encourages development to contribute to the diversity of urban character of the area by encouraging high quality and visually stimulating new development.
 - Contribute to Melbourne becoming a more compact city that accommodates most of the forecast new dwellings within its established suburbs (clause 9).
 - Contributing to a supply of land to meet projected demand for housing, particularly opportunities for the consolidation, redevelopment and intensification of existing urban areas (clause 11.02).
 - Facilitate increased housing in the established areas to create a city of 20-minute neighbourhoods close to existing services, jobs and public transport (clause 11.06).
 - Support housing growth and diversity in defined housing change areas and redevelopment sites (clause 11.06).
 - Direct new housing to areas with appropriate infrastructure (clause 11.06).
 - Increase the proportion of new housing in designated locations within established urban areas and reduce the share of new dwellings in Greenfield and dispersed development areas (clause 11.06).
 - Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport, and reduce the demand for development on Melbourne's fringes (clause 11.06).
- 27 The Monash Planning Scheme adopts a targeted approach to the preferred locations for more intensive development. Such development is directed to Glen Waverley and Oakleigh major activity centres and other lower order

activity centres. Minimal or tempered change is generally encouraged outside these centres.

- 28 While the commercial precinct in which the review site is located is not specifically identified by the local planning framework as a preferred location for intensive change, we think there is sufficient direction in the local policy framework to conclude that this is a site and precinct where intensive residential development is encouraged. We rely on the following policy:
- Higher rise development is directed to Oakleigh (4-8 storeys) and Glen Waverley activity centre, and this precinct can be considered as a part of, albeit peripheral to Oakleigh activity centre.
 - The Design and Development Overlay includes a preferred (but not mandatory) height limit of six and four storeys allowing development that is higher. This proposal is generally consistent with this order of change to the built form.
 - New intensive development is encouraged in preferred areas so the character of residential neighbourhoods can be enhanced (clause 21.04).
- 29 We think the approval of several nearby five to seven storey apartment buildings confirms our understanding of the policy framework.
- 30 Amendment C125 and the *Monash Housing Strategy 2014* provide the clearest policy directions that this precinct is to be a preferred location for intensive redevelopment. Under this amendment, Springvale Road and Dandenong Road are designated as boulevards that are to be the preferred locations (with other areas) for residential redevelopment. The *Monash Housing Strategy 2014* identifies these two roads as being suitable for housing change and diversification, with a tall built form that would be proportionate to the width of the roads. The strategy encourages new development that includes higher density, larger format apartment buildings. The strategy provides further encouragement by noting that development opportunities will be greater on larger consolidated lots.
- 31 Amendment C125 has been exhibited and reviewed by a Planning Panel. We understand that it is a complex amendment and the Panel considered many submissions and has made many recommendations. The Council accepts that its final form is somewhat uncertain, particularly given recent amendments to all Schemes approved by the State Government. However, we give it weight in this proceeding, as we understand there was limited dispute as to its recommendations regarding the review site and the precinct in which it sits.
- 32 We accept that while redevelopment of the review site and the wider precinct has substantial policy support, the height and massing of such development is not open ended, and the existing local planning policy framework remains relevant. We agree with the Council when it says:

However, policies that support more intense development in this location need to be considered within the context of the specific localised planning controls and policies that apply to the subject land.

- 33 Some of the key matters that arise from the prevailing policy framework include the appropriate heights of the buildings under Design and Development Overlay Schedule 10 (DDO10). DDO10 sets out a preferred building height of six storeys along Dandenong Road and four storeys along Dalgety Street. We note that DDO10 and local policy encourage the provision of landscaping to the street edges, including a three metre setback in this locality. They also encourage a high quality of design, and a transition from the robust Dandenong Road interface to a lower scale residential interface to Dalgety Street. We now turn to the determinative matters in this proceeding; these being building height and massing, open space and landscaping, and the vehicle access arrangements.

Should Building C be reduced to eight storeys and its setback to Dandenong Road increased?

- 34 Building C is situated in the southeast corner of the review site, with its frontage to Dandenong Road. This building is proposed to be ten storeys with a maximum centralised height up to 33 metres. It would comprise a seven storey street wall at the front boundary. Three levels above that would have varied setbacks in a stepped format. The building would include:
- 106 serviced apartments
 - Ground level retail of approximately 1309 square metres with a frontage to Dandenong Road
 - A three metre setback with raised planting box and visitor bicycle parking along the Dandenong Road frontage. The levels above would be constructed to the front boundary
 - Basement parking accessed via a 6.4 metre wide drive to Dandenong Road immediately adjoining the service station site
 - Multiple communal amenity areas for use by the occupants of the serviced apartments³.
- 35 The Council says Building C should be reduced from ten to eight storeys. It also seeks a uniform setback of the levels above the street wall, preferring a six metre setback from the Dandenong Road frontage behind the seven-storey parapet.
- 36 The respondent says the three metre landscaped setback only at the ground level, along its Dandenong Road frontage does not satisfy clause 22.03 and DDO10. He says these clauses require new development to provide appropriate landscaping for semi mature trees and large canopy trees. He submits that maintaining the current Dandenong Road boundary setback

³ These include approximately 418 square metres located on level seven adjoining the Dandenong Road frontage, with an additional area of 261 square metres to the rear, facing Dalgety Street.

treatment (approximately 10 metres) would ensure his client's petrol station site adjoining to the east continues to enjoy a high level of visibility. He is concerned that the three metres setback with balcony form to Dandenong Road will screen the service station, thereby restricting its visibility to road users. He also says the proposal will obscure views of the top portion of a pole identification sign that is located approximately 0.5 metre from the Dandenong Road frontage, in the southwest corner of the service station site.

- 37 With regard to the height and form of Building C, Mr Czarny accepts that the presentation of the built form to Dandenong Road (with a street wall set at seven storeys) is a compliant response to the DDO10. Nevertheless, he supports the reduction of upper level storeys for Building C. He is concerned that the proposed built form exceeds the preferred height of DDO10. He further says the three additional levels to Building C, positioned in a stepped arrangement is awkward and pyramidal in its presentation. It was his expert evidence that the upper level stepped form will be visible from longer-range views from the south side of Dandenong Road, as well as further afield locations. He says these upper levels should be reduced in scale, have a unified setback and a material distinction that allows them to read as a singular, recessive form.
- 38 Mr Sheppard agrees with Mr Czarny's assessment with respect to the seven storey street wall. He says that while the seven storey built form along Dandenong Road at the street edge exceeds the DDO's preferred maximum height (six storeys), this height is generally consistent with the emerging seven-storey scale in the precinct, and appropriate, given the width of Dandenong Road.
- 39 He diverges from Mr Czarny in respect of the storeys above the street wall. He says the three upper levels on Building C would be setback from the street and the adjoining properties, and they are located in the middle of the site. Consequently, they would have minimal visual impact.
- 40 Mr Biacsi agrees with Mr Sheppard and notes the upper level built form at the top floor (level nine) would be setback approximately 20 metres from the Dandenong Road frontage and a further 48 metres from the Dalgety Street frontage. He says the upper levels are appropriately stepped back into the site and he is not concerned that this will read as separate built form on the site.
- 41 Mr McGurn says that Building C will have modest setbacks with a landscaped podium at level seven adjoining Dandenong Road. He agrees with Mr Sheppard and Mr Biacsi that the upper levels have generous setbacks that will diminish their visual bulk or appearance to the public realm. Mr McGurn says the proposed ten-storey building along Dandenong Road is appropriate in the context of an emerging precinct of tall buildings on both sides of Dandenong Road.

- 42 We turn to the planning policy framework. Schedule 10 to the DDO contains a number of Design Objectives and Design Requirements that guide how height, visual bulk and massing are to be considered. We consider the following objectives and design requirements are particularly relevant to this proposal:

Design Objectives

- To encourage development to reinforce the Dandenong Road corridor
- To ensure that the building scale and form in terms of height and bulk complements and does not visually overwhelm surrounding buildings
- To encourage a transition between larger scale developments and abutting residential dwellings
- To minimise visual clutter

Design Requirements

- The visual mass of buildings should be minimised by articulation in both the horizontal and vertical planes so that long or high walls in a single plane are eliminated
- Development should feature articulation of facades, rooflines, variable colours and materials. Highly reflective building materials should not be used
- Streetscape elements should create an identity with the use of design elements including lighting and art works
- Development should maintain the “Boulevard” character of Dandenong Road

- 43 We also note the following statement under s2 of DDO10 headed *Height of buildings and works*:

Buildings and works are considered to meet the design objectives for height if they do not exceed the preferred maximum specified in the Map and Table to this schedule.

- 44 In this case Building C on the review site is located in Area B where the preferred height is 21.0 metres (6 residential storeys).
- 45 We agree with the Council that a permit can be granted under DDO10 for a development that exceeds the preferred maximum building height, indeed it is our view that a permit is required for all buildings and works in DDO10 regardless of its height. The important matter is whether it is appropriate to grant a permit for a building that is taller than the preferred height. In this matter the Council says:

Whilst plainly a permit can be granted to exceed the preferred maximum building height in DDO10, if the preferred maximum height limits are to retain their integrity and meaning, and achieve the

character they were designed to deliver, they ought not be abandoned or exceeded lightly.

- 46 We accept the Council's proposition that the preferred height in the schedule should not be lightly cast aside. We agree that we must implement the scheme as we find it and in some circumstances, approving developments that greatly exceed the preferred heights can lead to speculation, a race for taller development and ultimately cynicism and loss of respect for the integrity of the Scheme.
- 47 In this case, in this context, we are satisfied that it is acceptable to approve a development that is taller (by some margin) than the preferred heights in DDO10. We have come to this view for the following reasons:
- We are generally satisfied that while the height is non-compliant, the building is a well composed design response to the Design Objectives and Requirements
 - This building provides landscaping for both the public realm and its future residents
 - It is a visually interesting development
 - It makes good use of a rare, large site
 - Importantly in our view, it has not sought to simply maximise its development footprint, but to respond to its various different interfaces and provide very high amenity for its residents in the form of multiple open space areas
 - DDO10 originated from the landowners rather than a strategic planning study or urban design framework conducted by the Council. We think the preferred heights reflect a cautious response by Council, they have little basis in a rigorous design analysis and they have now been superseded by the Council's Housing Strategy. We think the Council generally agrees with our comments as it accepts that a building that is taller than the preferred height is acceptable, the dispute concerns the extent of additional height
- 48 We are not persuaded that the upper levels proposed for Building C need to be changed. We find the upper level built form on this building has been appropriately designed and purposefully placed in the middle of the site to avoid it dominating Dandenong Road and other surrounding buildings.
- 49 We acknowledge that parts of this upper level built form will be visible from some viewing points along Dandenong Road. We are not disturbed by their visibility. We think that taller robust built form is encouraged by DDO10, and is particularly encouraged by the *Monash Housing Strategy* that identifies Dandenong Road as a boulevard and a place for substantial change. Taller built form in this area is to be expected. Furthermore, we think that the visibility of the upper levels is a temporary concern, as we

think that it is inevitable that their presence will diminish over time as further development occurs in this precinct, including the adjoining sites.

- 50 We also consider that stepping the upper level built form is a sensible design approach that ensures the overall building form is compatible with the changing urban form in this precinct. The design response ensures the higher built form does not visually overwhelm other built form or detract from the emerging urban character found in this locality.
- 51 We concur with Mr Sheppard that the expansive width of Dandenong Road and Warrigal Road can readily absorb tall built form along their edges. We also agree with his comments that well-designed boulevards generally comprise wide roads that are bordered by taller buildings, as well as tall canopy landscaping along their edges or in medians.
- 52 Finally, we are satisfied that the proposal comprises extensive articulation of facades, balcony forms, landscaped communal areas and rooflines and variable colours and materials. In combination, we are satisfied that this building would provide high levels of visual interest and fit comfortably in this location.
- 53 Overall, we find the proposed built form along Dandenong Road is consistent with the emerging built form encouraged by the emerging policy framework for this particular section of Dandenong Road. We do not consider it necessary or desirable to amend the upper level stepped built form or lower the ten-storey height.
- 54 We now turn to the interface with the service station to the east. We do not agree with the submission from the respondent that the building setbacks along Dandenong Road should be increased to reduce the screening of the service station. We are satisfied that its visibility will not be adversely affected by the ground level three metre setback on the review site. We think that the widths of the respective road reserves at this intersection, as well as the left traffic lane provided along this section of Dandenong Road provide adequate visibility of the service station from the traffic lanes in Dandenong Road.
- 55 We have considered the respondent's suggestion to remove some of the level one balconies along Dandenong Road adjoining the service station site. We are not satisfied that their removal would achieve the objective that the respondent is seeking. We are not persuaded that removing the proposed balconies at level one, or setting back the overall built form, will assist motorists viewing the contents of the entire overall signage and the service station as a whole. We consider removing the balconies would compromise the streetscape appearance and form of Building C and this is unnecessary in our view.
- 56 We note the service station pole sign that Mr Crawford is concerned about includes digital signage panels. This may offer the opportunity to interchange the various sign panels at different levels and intervals to retain

their visibility. However we do not consider this is an issue for the reasons already provided.

- 57 With regard to respondent's concerns over landscape setbacks and tree canopy planting, we think that the landscape treatment at No.1525 Dandenong Road that is similar to the proposal before us, demonstrates that limited setbacks and raised planter beds can have a positive visual and amenity impact at ground level.
- 58 With regard to canopy trees in a three metre setback and a boulevard character, we agree with Mr Sheppard's evidence that the 'boulevard' and corridor character of Dandenong Road in this locality is not presently framed by a consistent line of large, formally planted street trees. This preferred character is likely to be created by taller built form such as this proposal and canopy landscaping within the road reserve, including the footpaths. We think that planting canopy trees in a three metre setback is unlikely to be successful or contribute to a boulevard appearance. Requiring the whole frontage to Dandenong Road to be set back three metres would not provide adequate space for new trees to contribute to a treed boulevard.
- 59 We conclude that the proposed three metre landscape setback, including specie selection shown on the landscape plans submitted with the application, is an appropriate response to the design objectives in the DDO10 and to local policy. We agree with Mr Wright that a better contribution to an emerging boulevard character would be to install trees within the median strip and/or along the footpath where they would have space to grow.

Should the north elevations of Building A be amended to reduce visual bulk?

- 60 The responsible authority says DDO10 and local policy encourage a transition in height and massing to the sensitive residential precinct fronting Dalgety Street to the north. It says Building A would present as a tall and imposing built form to the dwellings opposite and to people moving along Dalgety Street.
- 61 The responsible authority proposed the following condition be included in any permit:
- Building A – increased setback to seven-storey element to match alignment of DDO10 Precinct B boundaries.
- 62 The permit condition arises from Mr Czarny's assessment of the northern interface. It was his evidence that levels five and six of Building A would be unduly prominent because they would be a high vertical wall, screened only by a two storey street wall adjacent to Dalgety Street. It would also be a six-storey built form in the part of DDO10 that encourages a four storey built form. It was his evidence that the six storey built form within the preferred four-storey height limit area is not appropriate, and the built form should be either setback further from Dalgety Street, or its height reduced.

- 63 Under cross examination, Mr Czarny accepted that deleting or increasing the setback of dwellings 5.11, 5.12, 5.13, 6.10 and 6.11 would be sufficient to make the northern wall of Building A a more articulated and recessive building.
- 64 Mr Sheppard did not support the proposed permit condition. It was his evidence that the north facing wall would be recessive when viewed from Dalgety Street because it would be 22 metres from the north street boundary and over 50 metres from the front of the dwellings. It would also be screened by vegetation (particularly by the Dalgety Street median planting). He also thought people would view the upper storeys obliquely, in which case the upper storeys would be screened by the four storey street wall along most of Dalgety Street. Mr Biacsi and Mr McGurn agreed with Mr Sheppard.
- 65 We prefer Mr Sheppard's assessment and, in the context of the site being in an area of substantial change, we are satisfied that the upper storeys of Building A would be acceptable, and do not need to be altered. We have come to this finding for the following reasons.
- The fifth and sixth storeys of Building A would be a generous distance from the north side of Dalgety Street, and would be largely screened by the two and four storey street wall to that street. We think that a pedestrian or motorist passing by the building would have limited views of the upper storeys.
 - We think the upper floors would have a high level of visual interest and articulation due to their balconies and changes in materials. It would not appear as a bland, blank sheer wall.
 - We have observed that the dwellings on the south side of Dalgety Street face the review site. We think that the proposal would not detract from the amenity of these dwellings because their most sensitive areas, such as family rooms and secluded open spaces, are at the rear of the dwellings, well removed from the review site, and their dwellings screen the views of the proposed building.
 - Furthermore, the extensive mature landscape screening in the median break of Dalgety Street provides an effective visual screen. We see little prospect that this vegetation would be reduced or removed in the near to medium future. Indeed, we note that the applicant proposes to add to this planting treatment in Dalgety Street.

Should the development include a north-south walkway that would be open to the public and the sky?

- 66 A ground level community amenity area would be provided between Buildings A and B. It would enable pedestrian access to the food and drink premises fronting Dalgety Street and access to the lobby for Buildings A and B.

- 67 No access would be provided between the lobby to Buildings A and B and the retail supermarket, or to the lobby of the Hotel. Neither residents of the development, or people who live to the north and east of Dalgety Street, could walk through the site between Dalgety Street and Dandenong Road.
- 68 Mr Czarny was critical of the inability of residents within and near the development to walk between the two roads. He says good urban design suggests that a pedestrian link should be provided to assist wayfaring. He proposed the link should comprise the communal area fronting Dalgety Street and a three metre wide pathway on the western boundary of No.1513 Dandenong Road. He further proposed the pathway should be clear to the sky, the west side of ground floor and levels 1-6 to be deleted. He says a three metre wide link would eventually be matched by a similar link on the adjoining fast food site when it is redeveloped.
- 69 Mr Sheppard, Mr Biacsi and Mr McGurn say the link is not required. They say there is no clearly defined or well-used pedestrian link at present that should be replicated. There are no obvious pedestrian origins and destinations that make a pathway through the review site necessary. They say encouraging people to walk through the development would cause safety and amenity concerns for the traders, hotel guests and residents within the development. Mr Sheppard says the interface to the walkway would need to be carefully designed to ensure that it is activated and safe. Mr McGurn says the planning scheme does not provide any policy basis to require the link to be provided. Mr Cicero described the proposal as land acquisition without payment.
- 70 We are not persuaded that a public pedestrian link along the western boundary of No.1513 Dandenong Road, clear to the sky, is required or justified.
- 71 Except for some broad references to good urban design in clause 15.01, we are unable to find any policy directions in local policy or the DDO that contemplate or encourage such a link. We think this has to be the starting point, and the absence of support in policy requires us to give little weight to support this suggestion.
- 72 Even if a link was contemplated by local policy, we have significant doubts as to its usefulness, safety and convenience in this particular location. We do not think it is good urban design to create a pedestrian link that would be likely to encourage people to attempt to cross Dandenong Road in a location that has no protection from traffic signals.
- 73 The link would also pass the entries and habitable rooms of eleven dwellings adjoining the communal area, and more dwellings at the levels above. We think there is a substantial prospect of disturbance, causing residents to feel unsafe.
- 74 The link near Dandenong Road would need to be activated and managed to be safe. In our view a narrow pedestrian link that is bordered by blank walls

would be perceived to be unsafe and would be seldom used, contrary to the worthy urban design aspirations. Further advice on its location and design treatment would also be required from VicRoads. No evidence or advice was provided to us from VicRoads supporting this additional access to Dandenong Road.

- 75 We agree with Mr Czarny insofar as it is inconvenient for residents in Buildings A and B that face Dalgety Street to have to walk out of the development and around the block to enter the supermarket from Dandenong Road. It also seems unnecessarily inconvenient for guests in the serviced apartments to also have to walk around the block to visit the food and drink premises. We think that a more permeable pedestrian network can be devised for occupants that does not also invite people outside the development to walk through it.
- 76 We will impose a condition in the permit that requires improved pedestrian permeability and convenience for residents and serviced apartments guests within the site.

Would the development provide acceptable amenity for its residents?

- 77 We find that the amended proposal would generally provide a high level of amenity for future occupants and visitors of both dwellings and the serviced apartments. We have come to this finding for the following reasons:
- The development proposes a range of one, two and three bedroom dwellings with varying, but adequate room sizes, balcony areas and access to natural light and ventilation.
 - The development also includes two storey townhouse dwellings along Dalgety Street that contain individual entrances and terraced setbacks, adding to housing diversity.
 - Dwellings within the development generally provide opportunities for views over adjoining streets or across internal communal landscaped areas.
 - There would be a significant range and form of communal landscaped terraces and open areas at ground, and levels one, three, four, five, six, seven, eight and nine. These communal areas include a BBQ area, kitchen areas and seating within a landscaped setting that will be themed. The majority of the terraced areas would also be north facing. We think these spaces would provide a significant benefit to future residents, particularly as the location is relatively robust.
 - The privacy of the apartments is satisfactorily addressed by offsetting windows and balconies, or providing generous separation distances (typically 11 metres and more).
 - Serviced apartments are typically smaller in size and comprise a studio style or bedroom set back from the main living space. A range of communal facilities are also provided for these short-term residents

including dining and function spaces and lounge/conference area. A large open outdoor area (330.2sqm) is also provided at level one.

- The development is provided with adequate on-site vehicular and bicycle parking for future residents.
- The site is also in comfortable walking distance to public transport, nearby commercial activity centres and other forms of public parkland.

78 Though it generally supports the amended proposal, the Council raised some specific matters that it says will help improve the liveability and amenity of future occupants. The Council proposed the following conditions be included on any permit:

- Building B - Reorganise the communal courtyard to allow for improved communal amenity and solar access. This rearrangement may result in reorienting the courtyard to the north.
- Buildings A and B - Improved foyer and entry address, accessible off the central communal amenity space to improve a sense of address (and the navigation to building entries and distances along corridors).

79 Mr Czarny supported the Council's conditions. He says the proposed arrangement of lobby and lift access for Buildings A and B is difficult to identify and circuitous. He says the sense of address to the lift lobbies should be from the central communal entrance off Dalgety Street.

80 In respect to the communal courtyard for Building B, he is concerned this area would face a four-storey profile to its north. He considers the amenity of this area would be compromised in terms of shadow impact and apartments facing it to the east and west.

81 The applicant submits the proposed development provides a very high standard of internal amenity and liveability. It says the whole development enjoys access to a significant amount of communal space, most of which has a northerly aspect.

82 We do not consider the communal courtyard in Building B requires reorientation. Mr Wright's landscape plans show that all of the communal areas will be planted with robust species that would perform well in shade. He did not express concern over the use and effectiveness of planting treatment in this area. We accept his evidence on this matter and also note the area is open to the sky and has generous east-west width dimensions between nine metres up to 12.7 metres, and an overall area of 367 square metres. We think the size, location and aspect of the communal area for Building B is satisfactory and that it would provide a pleasant sense of place and green space to those apartments that abut it.

83 We consider it is critical that an appropriate management regime is in place to ensure the landscaping achieves its design purposes and impact over the

longer term. We accept that the residents of the dwellings are likely to insist that the Owners Corporation provide a high level of maintenance, but we think a permit condition is necessary to ensure this outcome.

- 84 As we have observed above, the parties also discussed the ease and clarity of internal circulation of residents from Dalgety Street through to the foyer and retail area in Building C. We accept that there will be some movement challenges for first time visitors to the site, given the size of this development over various levels. We agree that this can be improved in some places in the development. We will therefore include a condition on the permit that will require improved pedestrian permeability and convenience for residents and hotel guests within the site.
- 85 We do note that direct pedestrian access from Dalgety Street, aligned parallel to the communal area in Building B, was not connected to the larger foyer lobby area that is internal to the site at ground level. We consider this connection would improve internal circulation. The applicant agreed this would be a practical amendment to the proposal. We will add this detail into the proposed conditions on the permit to require this additional pedestrian connection from Dalgety Street to the foyer.
- 86 In respect to the Council's concerns over safety and appearance of the foyer entrance, we are satisfied that the proposed foyer entrance provides a clear and visible entrance statement to the site from Dalgety Street. We do not support the Council's contention that the entrance to Buildings A and B requires further work or improvements to address its efficient and safe use by future residents and visitors. We accept that some distances along various corridors will be challenging for first time users, but do not consider this unusual in a development of this scale.
- 87 We are concerned with possible noise levels within the dwellings. The site is subject to high levels of traffic noise associated with vehicles using Dandenong Road and Warrigal Road. This is a highly trafficked location that is likely to experience an increase in traffic volumes. The area also has many active commercial and service industries on nearby and adjoining sites that generate additional noise in this vicinity.
- 88 We questioned the applicant and witnesses whether they considered it necessary to place conditions on the permit that addressed and considered the impacts of acoustic noise levels ahead of the development proceeding.
- 89 We note that Mr McGurn in his written evidence, considered that noise sources in the surrounding area (both from traffic and commercial sources) could be adequately addressed through compliance with appropriate construction standards and post occupancy acoustic assessments.
- 90 We agree with his concern, but question the timing of the assessment, particularly if it is established that significant acoustic amelioration is required to apartments that already have been built. Retrospective noise attenuation treatment can be an extremely costly and disruptive. We think it

is prudent to complete an initial acoustic assessment before plans are endorsed. We will therefore include a condition on the permit that requires a preliminary acoustic noise assessment to establish what (if any) particular noise attenuation treatments are required.

- 91 We also raised in the hearing possible reverse amenity issues that may arise from the current operations of the petrol station, two fast food premises, car wash and motor repairs located on the east and western boundaries. We observe that it is common for sensitive residential uses adjoining uses such as fast food outlets, petrol stations and car washes to be protected by acoustic fences. We consider this matter needs also to be assessed, although we accept that much of the onus to minimise noise from the adjoining uses will rest with the operators of these premises who will be required to comply with SEPP N-1 with regard to noise from plant and equipment.
- 92 We accept that noise is part of the site's context, but we think it is appropriate to take reasonable measures to ensure that the development will provide an acceptable level of amenity for its residents, and this is best achieved by an acoustic assessment.

Would the development provide equitable development opportunities for adjoining land?

- 93 The respondent submits that the amended proposal does not appropriately interface with Dandenong Road or his client's service station site. As a result he says this proposal does not provide an equitable development opportunity for his client. In particular he is concerned that the proposal presents a partial blank wall to the service station site and it provides a serviced roof area to the eastern side of the serviced apartments that would be unattractive for future residents of an apartment building on his client's site. He submits that the roof should be replaced with a useable open space area that would be a more pleasant interface.
- 94 We do not agree with this position. We consider that the partial internal facing blank wall referred to by the respondent is opportunity that can be used to advantage when designing future redevelopment of the service station site. Mr Wright's presented evidence on the quality of proposed landscape treatment for communal open space areas on various levels of the overall development. Based on this evidence we are satisfied that these areas will not present as poor outlooks for future occupants.
- 95 Mr Sheppard and Mr Biacsi were satisfied that the development makes adequate provision for the inevitable redevelopment of the adjoining sites. Mr Sheppard highlights the following range of building setbacks and wall conditions on the review site that he says allows for reasonable future development opportunities on adjoining sites:
- Dalgety Street building, 5m from southern boundary and 4.5m from eastern boundary.

- Dandenong Road Building, blank walls at the southern ends of its eastern and western boundaries and a further 11m from the common boundaries with Nos. 1507 and 1519 Dandenong Road.
- 96 Mr Biacsi says that the proposed development on the review site, particularly the positioning and detailing of side boundary walls and light courts, allows for equitable development of these properties into the future. Mr McGurn agrees with this assessment. He says that each interface with the adjoining properties allows for some built form setback. In his view this creates reasonable opportunities for future adjoining development. Where built form occurs on boundaries (as is often the case with multiple level development) Mr McGurn says this treatment allows for the construction of boundary walls on adjoining properties.
- 97 Objective 2.6 of the *Guidelines for Higher Density Residential Development (DSE, 2004)* includes the design suggestion under 2.6.1 to address equitable development opportunities:
- Consider the possible future development of adjoining sites and allow, best as possible, or (sic) an equitable spread of development potential throughout the area.
- 98 Though the DDO10 schedule does not refer to this matter in specific detail or in this descriptive manner, we consider the following design objectives are relevant:
- To encourage development to reinforce the Dandenong Road corridor.
 - To encourage development to contribute to the diversity of the urban character of the area by encouraging high quality and visually stimulating new development.
 - To ensure that the building scale and form in terms of height and bulk complements and does not visually overwhelm surrounding buildings.
 - To encourage a transition between larger scale developments and abutting residential dwellings.
- 99 It is important to note that other divisions of the Tribunal have found that equitable development opportunities do not automatically translate into equal amounts of development for all. The amount of development that will ultimately be possible on the adjoining sites will largely depend upon each design response prepared for that site, together with the final approval of that design response from the responsible authority at that time.
- 100 In this context we are satisfied that the proposed development has considered and satisfactorily addressed equitable development opportunities that may arise in the future on adjoining properties. We make the general observation that the proposal before us has taken a reasonable and balanced approach that will ensure each of the adjoining sites will be able to achieve some level of redevelopment potential. This balanced outcome is important,

particularly in the context of those sites that offer some levels of further redevelopment opportunity within this precinct.

Does the development set a precedent for excessive development on other lots?

- 101 The responsible authority says a ten-storey apartment building should be refused or reduced in height because its height would set a precedent that will enhance expectations for even taller buildings on the remaining sites, particularly on the corner of Warrigal Road and Dandenong Road. Mr Czarny says that a ten-storey building would be appropriate on the prominent corner site, and buildings on other sites should transition down in height towards the east.
- 102 Mr Sheppard, Mr Biacsi and Mr McGurn reject this proposition. They say the appropriate height of the building on the corner will be determined by the size of the land, the building's design and the applicable policies. Mr Sheppard says that a ten storey building on the corner could be highly prominent because the site is small, setbacks will be limited and it is a very visible site due to the breadth of the roads and the intersection.
- 103 We are not persuaded that our approval of a ten storey building on this site sets a precedent or unnecessarily raises expectations for taller buildings on the other sites within DDO10. We come to this view because:
- A ten-storey building is appropriate on this site because its size and mid-block location provides a unique opportunity to locate the taller elements in a recessive manner.
 - There is a long and consistent line of Tribunal decisions that support the proposition that all proposals are to be assessed on their merits, taking into account the site features and context, the policy context and the design response. Such considerations do not inevitably lead to a building that is taller than this proposal.
 - Policy and planning controls may change.
 - The responsible authority advised us that it is not aware of any development proposals for other sites in this precinct.
 - Adjoining landowners may oppose a tall building.
 - Other sites may be constrained by vehicle access and parking.
- 104 We therefore conclude this proposition is highly speculative and we consequently give it little weight in our decision.

Would the traffic, car parking and loading arrangements be acceptable?

- 105 The development comprises 260 dwellings and 106 serviced apartments, a food and drink premises and 2082 square metres of retail floor area.
- 106 554 car parking spaces, 9 motorcycle parking spaces and 219 bicycle parking spaces would be provided in three basements. The basements

would be accessed from Dandenong Road (one entry) and Dalgety Street (two entries). We understand that customers of the larger retail tenancy (a supermarket), the hotel guests and residents would be expected to use the car entry to Dandenong Road.

- 107 Residents and the customers and staff of the northwest retail tenancy and the food and drink premises would use the car park entry in Dalgety Street, near Warrigal Road. Residents would use the eastern entry in Dalgety Road.

Parking

- 108 The proposed mix of uses is required to provide 440 spaces pursuant to clause 52.06-5 (with an unspecified number of spaces for the serviced apartments). Hence, the development exceeds the overall number of car parking spaces required to be provided by the planning scheme. We regard the provision of car parking to be acceptable as the scheme only provides the responsible authority and the Tribunal on review with the discretion to reduce or waive the required number of spaces. We do not have the discretion to require this development to provide more spaces.
- 109 While the overall number of parking spaces complies with the scheme, the spaces allocated for the various uses does not comply. Forty-two more parking spaces would be provided to residents than are required.
- 110 Forty spaces would be allocated to visitors of the dwellings, while 52 are required to be provided. Thirty spaces are required to be provided for the customers and staff of the shops, but none are specifically allocated to these users. Staff, customers and visitors would use sixty unallocated spaces.
- 111 The responsible authority and Vic Roads had no objections to the number of car parking spaces and the internal layout of the car parking in the basements, subject to the provision of directional signage.
- 112 We are satisfied that the proposal to allocate sixty spaces for the shop staff and customers would be acceptable. We think the combined spaces would comprise a flexible arrangement that would cater for the inevitable ebb and flow of parking demand in this large development.
- 113 We also accept that 42 additional spaces can be allocated to the dwellings to provide some flexibility to accommodate a wide range of household types and circumstances.
- 114 The development would provide 54 spaces for the staff and guests of the 106 room serviced apartments. Clause 52.06-5 of the scheme does not set out a specific rate and requires parking to be provided to the satisfaction of the responsible authority.
- 115 In her evidence Ms Dunstan says the parking required by serviced apartments depends on the likely clients and its location. It was her evidence that, in this location, she expects that approximately half the guests would have their own cars, and a moderate proportion of guests would be likely to use public transport and taxis/Uber because of its

proximity to Chadstone and Oakleigh activity centres. She says the large number of spaces in the basements provides some flexibility, and the allocation of spaces would be best managed through an operator's management plan.

- 116 We agree with her that there is only a limited possibility that 54 spaces would be inadequate parking for the serviced apartments. We think that the clientele will be self-selecting, so if parking is unavailable, guests would seek other accommodation. In peak periods there is also some on-street parking capacity in Dandenong Road and Dalgety Street, particularly outside business hours. We think that if we are wrong and more guests seek parking and there an overflow onto local streets, it is relatively easy to manage through the enforcement of Council restrictions in the streets.
- 117 We would not like the parking within the basements to be incrementally allocated from the retail or visitor parking to the serviced apartments, and we will impose a condition that ensures that the parking allocated to the other uses is permanently available. We also think the Owners Corporation would resist the reduction of parking for the long-term residents and shop staff and customers in favour of the short term stay serviced apartments guests.

Traffic

- 118 The responsible authority and VicRoads had no objections to the traffic that would be generated by the development and the entry arrangements.
- 119 The two respondents say the traffic and access arrangements to the parking areas are unacceptable. NTZ Pty Ltd owns the petrol filling station and its related activities at No.1523 Dandenong Road adjoining to the east. It says its crossover and entry is located close to the property boundary. It says there will be the risk that vehicles diverging left into its land could collide with vehicles turning left to enter or leave the review site, as well as collisions with through traffic on Dandenong Road.
- 120 We accept the evidence of Ms Dunstan that vehicles leaving the review site have to give way to traffic on Dandenong Road that is passing the review site, including vehicles that would turn left into the petrol station. She says vehicles leaving the review site will have good sightlines. Furthermore speeds will be relatively low due to the slow traffic lane on the left side of Dandenong Road. She says the proposed new crossover close to the entry to the petrol station is similar to the existing situation.
- 121 The statement of grounds from the Dalgety and Surrounds Residents Group says Dalgety Street and the local road network will become very congested, resulting in unreasonable delays and accidents.
- 122 With regard to the traffic levels on Dalgety Street and other local streets, Ms Dunstan estimates the worst-case scenario (that all trips occur at the same time) would generate a maximum hourly volume of 380 vehicle movements. If the traffic is evenly distributed through the three

entries/exits, this would be an average of two vehicle movements per minute through each entry.

- 123 Ms Dunstan says a vehicle movement every thirty seconds can be accommodated on the local road network. It was her expert opinion that the new traffic levels would not significantly change the level of operation on the streets, primarily because there are multiple dispersion points from the local streets to the higher order roads.
- 124 We acknowledge that the development will inevitably increase the traffic on local streets, and the queues and time to access Warrigal Road and Dandenong Road will increase. However, we consider that motorists will adapt in various ways to lessen the delays and the impacts. For example, we expect some people may leave their car at home and cycle or use public transport. Some people may change their departure or arrival times. Some may car share. We think the local road network will continue to operate efficiently albeit with a slightly lower but still acceptable level of service.
- 125 We think that a lower level of service on the local roads in and near areas that are designated for substantial change is an inevitable but necessary consequence of overall planning policies that encourage more households to live in the established suburbs. We think the disbenefit of slightly increased congestion and delays is significantly outweighed by community benefits of enabling more people to live in areas that are well provided with shopping, employment, and education and health opportunities. A more compact city should also be a more sustainable city, reducing the take up of land on Melbourne's fringes that has landscape value and productive agriculture capacity that needs to be developed for new suburbs. This outcome is consistent with relevant State planning policy.

Deliveries and loading bays

- 126 It is proposed to provide two loading bays on the upper ground level. One bay would service the supermarket and hotel, the other would service the food and drink premises (if required) and the other retail tenancy in the northwest corner. The two bays would be accessed via a 7.8 metre wide driveway and crossover to Warrigal Road. The configuration would enable smaller semi-trailer and larger rigid trucks enter the site, reverse into the loading bays and importantly, leave the site in a forward movement.
- 127 Ms Dunstan says the proposed loading bays and access arrangements are acceptable and would not disrupt traffic flows on Warrigal Road. We observe that VicRoads had no objection to the proposal. We accept their expert opinions and are satisfied the loading and unloading arrangement is acceptable.
- 128 Larger apartment buildings are often criticised by people who reside nearby for failing to provide a facility for residents to load and unload their furniture, particularly when moving in or leaving the building. It is often

said that smaller delivery vans and cars and trailers can cause traffic and parking difficulties.

- 129 The applicant agreed that both neighbours and future residents would benefit if they could use the loading bays to deliver and remove larger household items such as furniture. We agree with his proposal that such deliveries could be managed through a loading bay management plan that would set out the arrangements for residents to book their use of the loading bays at times when they are not required by trucks delivering materials to the shops or hotel. We will impose a permit condition to require the approval of a loading bay management plan.

CONCLUSION

- 130 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions that follow from our reasons and the draft without prejudice conditions tabled by the responsible authority, as discussed at the hearing.

G Rundell
Presiding Member

P Gaschk
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/46427
LAND	807-811 Warrigal Road and 1513-1517 Dandenong Road, Oakleigh
<p style="text-align: center;">WHAT THE PERMIT ALLOWS</p> <p>In accordance with the endorsed plans:</p> <ul style="list-style-type: none"> • Use of the land for accommodation (dwellings and serviced apartments) in a Commercial 1 Zone • Construction of buildings and works in a Commercial 1 Zone and Design and Development Overlay Schedule 10 • Removal of an existing easement (easement E-1 on TP438575Q and Easement E-1 and E-2 on PS403162C) (clause 52.01) • Creation and alteration of access to a road in a Road Zone Category 1 (clause 52.29) 	

Conditions

- 1 Before the development starts, three copies 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 substituted by VCAT (Rothe Lowman, Project No. 216027, Rev A 20.04.17 circulated 21/04/17), but further modified to show:
 - (a) Parking allocated to the residential dwelling component of the development physically secured and separated from the retail and residential hotel components of the development. Residential visitor car parking may be provided within common property/collective use.
 - (b) Direct vehicle access to parking areas associated with the retail tenancy fronting Dandenong Road and residential hotel components of the development only via Dandenong Road.
 - (c) Direct vehicle access to parking areas associated with the retail tenancy fronting Warrigal Road and the Food and Drink Premises fronting Dalgety Street only via Dalgety Street.
 - (d) A corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) to provide a clear view of pedestrians on the footpath of the frontage road.

- (e) Any required modification to plans as recommended in the required Wind Modelling Assessment as required by Condition 5.
- (f) A detailed schedule of all materials and finishes.
- (g) Bicycle parking shown in Dalgety Street relocated to the communal amenity area between Buildings A and B, with half adjacent to the Food and Drink Premises and half adjacent to the Lobby.
- (h) Provision of supermarket trolley returns within the car park if required by the supermarket operator.
- (i) The height of the wall abutting the eastern boundary reduced to 2.4 metres, unless a higher wall is required to address acoustic recommendations.
- (j) Access provided for residents of the development to the supermarket from the lobby between buildings A and B.
- (k) The pedestrian connection from Dalgety Street running parallel to the communal amenity area in Building B opened for pedestrian access into the foyer.
- (l) All recommendations from the Preliminary Acoustic Noise and Amenity Assessment as required by condition 4 of this permit.

All to the satisfaction of the responsible authority.

- 2 The development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.
- 3 Once the development has started it must be continued and completed to the satisfaction of the responsible authority.
- 4 Prior to the endorsement of plans pursuant to condition 1 of the permit, a Preliminary Acoustic Noise and Amenity Assessment must be undertaken by suitably qualified persons to establish what (if any) particular noise attenuation or additional amenity treatments are required. All recommendations or required modifications to the development must be shown on the plans for endorsement and then implemented to the satisfaction of responsible authority.
- 5 Prior to endorsement of plans pursuant to Condition 1 of the permit, a Wind Modelling Assessment must be undertaken by a suitably qualified person to assess the wind impact of the development at street level. Any recommendations or required modifications to the development must be implemented to the satisfaction of responsible authority.
- 6 Prior to the commencement of any works, use and development and for the usage of the land to be changed for a sensitive use (Residential) permitted by this permit for the land, the applicant must provide to the responsible authority either:
 - (a) A certificate of environmental audit must be issued for the land in accordance with Part IXD of the *Environment Protection Act 1970*; or

- (b) An environmental auditor appointed under the *Environment Protection Act 1970* must make a Statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.

Three copies of the Certificate of Environmental Audit or the Statement of Environmental Audit and the audit area plan must be submitted to the responsible authority.

- 7 The development and/or use allowed by this permit must strictly comply with the directions and conditions of the *Environment Protection Act 1970* and also with the conditions on the Certificate or Statement of Environmental Audit.
- 8 A Section 173 Agreement under the *Planning and Environment Act 1987* may need to be entered into with the responsible authority depending on the conditions of the Statement of Environmental Audit issued for the land. Any amendment must be approved by the responsible authority prior to the commencement of any works, use and development and may require further assessment of the land.
- 9 Prior to the use of the land permitted by this permit, issue of a Certificate of Occupancy under the *Building Act 1993* and certification/issue of a statement of compliance under the *Subdivision Act 1988* a letter must be submitted to Council prepared by an Environmental Auditor appointed by the Environment Protection Authority under the *Environment Protection Act 1970* to verify that the conditions of the Statement of Environmental Audit issued for the land have been satisfied.

A copy of the certificate or statement of Environmental Audit issued for the land must be provided to each owner, under a covering letter which draws attention to any conditions or directions on the Certificate or Statement of Environmental Audit.

The land owner and all its successors in title or transferees must upon release for private sale of each of the lots created (if any) by the subdivision include in the Vendor's Statement pursuant to Section 32 of the Sale of Land Act 1962 annexed to the Contract of Sale for the sale of the land, a copy of the planning permit and relevant plans, Certificate or Statement of Environmental Audit for the land and any management plans or other documentation required to be prepared and adhered to in respect of the land.

- 10 Prior to the commencement of the permitted development, the owner of the land to which this permit relates must enter into an agreement with the responsible authority under Section 173 of the *Planning and Environment Act 1987*. In addition to the usual mechanical provisions, the agreement must provide for the following matters:
 - (a) Serviced apartment premises within the development are restricted to short-stay serviced apartments defined as "Residential Hotel" by the Monash Planning Scheme.

- (b) Permanent occupation of apartment premises as a primary residence is prohibited.
- (c) Serviced apartment premises are to be managed and remain under the control of a single operator responsible for the operation and maintenance of the entire premises.
- (d) Car parking allocated to serviced apartments on Title, are to be managed and allocated by the serviced apartment operator to the satisfaction of the responsible authority.
- (e) The costs of the responsible authority in relation to the preparation, review and registration of the agreement are to be borne by the owner.

A memorandum of the Agreement is to be entered into on Title. The cost of the preparation and execution of the Agreement and entry of the memorandum on Title is to be paid by the owner.

- 11 Prior to the commencement of the use for serviced apartments an Operational Management Plan concerning the serviced apartments prepared to the satisfaction of the responsible authority must be submitted and approved by the responsible authority. The plan should detail but not be limited to:
 - (a) The presence of a manager on site;
 - (b) Services provided;
 - (c) Operating hours;
 - (d) Management of the car park associated with the serviced apartments.

When approved, the Operational Management Plan will be endorsed to form part of this permit and must be implemented to the satisfaction of the responsible authority.

- 12 Function and conference facilities within the development must not exceed 30 patrons/seats at any single time and be operated ancillary to the primary use as serviced apartments, unless otherwise consented to in writing by the responsible authority.
- 13 Function and conference facilities must only operate between 7:30am and 7:30pm Monday to Friday unless otherwise agreed to in writing by the responsible authority.
- 14 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:
 - (a) The method of collection of garbage and recyclables for uses;
 - (b) Designation of methods of collection by private services;
 - (c) Waste collection via the laneway adjacent to the northern boundary;

- (d) Appropriate areas of bin storage on site and areas for bin storage on collection days;
- (e) Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas;
- (f) Litter management.

A copy of this plan must be submitted to and approved by the responsible authority. Once approved the Waste Management Plan will be endorsed to form part of the permit.

- 15 No goods must be stored or left exposed outside the building so as to be visible from any public road or thoroughfare.
- 16 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.
- 17 The amenity of the area must not be detrimentally affected by the use or development, through the:
 - (a) transport of materials, goods or commodities to or from the land;
 - (b) appearance of any building, works or materials;
 - (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
 - (d) presence of vermin;
- 18 The loading and unloading of goods from vehicles must only be carried out on the land.
- 19 A Loading Bay Management Plan shall be prepared and approved by the responsible authority. The Plan shall provide for the reasonable, safe and convenient use of the loading bays within the development by residents living on the subject site to deliver and remove household furniture and goods.
- 20 The occupants and management 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. N-1 and N-2 and must on request provide evidence to Council of Compliance with the policies.
- 21 Air-conditioning and other plant and equipment installed on or within the buildings must be so positioned and baffled that any noise emitted complies with the appropriate Australian Standards and EPA requirements.
- 22 At the immediate request of the responsible authority noise testing must be taken to demonstrate compliance with EPA noise requirements. Noise testing is to be undertaken at no cost to the responsible authority.
- 23 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.

- 24 A landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the responsible authority prior to the commencement of any works. The plan must show the proposed landscape treatment of the site including:-
- (a) Planting to soften the appearance of the development.
 - (b) Schedule of all proposed trees, shrubs, creepers 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.
 - (c) Provision of appropriate species suited to low water use and low ongoing maintenance.
 - (d) Detail of growing medium, irrigation and drainage of planter boxes and planting within confined spaces.
 - (e) The extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
 - (f) Subject to approval from the responsible authority and Vic Roads, additional planting within the Dandenong Road, Warrigal Road and Dalgety Street road reserves abutting the subject.

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

- 25 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, including planting in the road reserves at the cost of the owner or developer, and then maintained to the satisfaction of the responsible authority.
- 26 The landscaping shown on the endorsed plans must be maintained to the satisfaction of the responsible authority in accordance with a Landscape Maintenance Plan prepared by a suitably qualified landscape architect addressing such matters as watering system maintenance and such other matters as considered necessary by the responsible authority. The Landscape Maintenance Plan must be completed to the satisfaction of the responsible authority and will form part of the permit.
- 27 Before the use and development permitted starts, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
- (a) constructed to the satisfaction of the responsible authority;
 - (b) properly formed to such levels that they can be used in accordance with the plans;

- (c) surfaced with an all-weather sealcoat to the satisfaction of the responsible authority;
- (d) drained, maintained and not used for any other purpose to the satisfaction of the responsible authority;
- (e) line-marked to indicate each car space and all access lanes to the satisfaction of the responsible authority.

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

- 28 The layout of the development shall generally follow the Design Standards for car parking set out in Clause 52.06-8 of the Monash Planning Scheme.
- 29 Car parking within the development must be allocated as follows:
 - (a) Provision of no less than 1 car space to each one or two bedroom dwelling.
 - (b) Provision of no less than 2 car spaces to each three or more bedroom dwelling.
 - (c) Provision of no less than 102 car spaces associated with the supermarket, cafe and retail tenancies.
 - (d) Provision of no less than 1 car space per 5 dwellings for residential visitor car parking.
 - (e) Provision of no less than 0.51 car spaces per serviced apartment/hotel room.
- 30 Any future subdivision of the development must provide for car parking in accordance with the above-mentioned requirement on Title to the satisfaction of the responsible authority. Car parking associated with serviced apartments are to remain entirely within common property associated with the serviced apartments and managed by the operator of the serviced apartments to the satisfaction of the responsible authority. Residential visitor car spaces are to remain in common property associated with and accessible to the residential dwelling component of the development.
- 31 Prior to occupation of premises approved by this permit a Car Parking Management Plan must be submitted to and approved by the responsible authority.
- 32 The Car Parking Management Plan must provide for adequate allocation of car parking to service all uses to be undertaken on the land including designated allocation of car spaces for residential visitor, staff of retail and hotel use of the car park. The Car Parking Management Plan must detail any barrier mechanisms and/or paid parking arrangements within public parking areas introduced and implemented in consultation with and to the satisfaction of the responsible authority.

Once approved the Car Parking Management Plan will be endorsed to form part of this permit. Car parking is to be provided in accordance with the endorsed Car Parking Management Plan and implemented to the satisfaction of the responsible authority.

- 33 Before the development starts, a site layout plan drawn to scale and dimensioned must be approved by the responsible authority.
- 34 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.
- 35 The nominated point of stormwater connection for the site is to the north of the property where the entire site's stormwater drainage must be collected and free drained via a pipe to the Council pit in the nature strip via a pipe to be constructed to Council Standards. A new pit is to be constructed if a pit does not exist or is not a standard Council pit. If the point of discharge cannot be located then notify Council's Engineering Division immediately.
- 36 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:
 - (a) trench grates (150mm minimum width) located within the property; and/or
 - (b) shaping the driveway so that water is collected in a grated pit on the property; and/or
 - (c) another Council approved equivalent.
- 37 Prior to the development commencing detailed engineering plans for civil works within Dalgety Street are required to be submitted to Monash City Council Engineering Department for approval. These plans must include the following:
 - (a) New and modified vehicle crossovers.
 - (b) The provision of indented car parking and any modification to the footpath and nature strip.
 - (c) Any civil works and infrastructure within Council land along the site perimeter.

These works are to be designed, constructed and inspected to the satisfaction of the Monash City Council Engineering Department. The full cost of the design and construction is to be met by the permit holder.

- 38 The existing redundant crossings are to be removed and replaced with kerb and channel. The footpath and nature strip are to be reinstated to the satisfaction of Council.
- 39 All new 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.

- 40 The layout of the development shall follow the Design Standards for car parking set out in Clause 52.06-8 of the Monash Planning Scheme as detailed below:
- (a) Driveway to provide at least 2.1m headroom beneath overhead obstructions.
 - (b) Driveway gradient to be no steeper than 1 in 10 (10%) within 5 metres of the frontage to ensure safety for pedestrians and vehicles.
 - (c) Ramp grades (except within 5 metres of the frontage) to be designed as follows:
 - (i) Maximum grade of 1 in 4.
 - (ii) Provision of minimum 2.0 metre grade transitions between different section of ramp or floor for changes in grade in excess of 12.5% (summit grade change) or 15% (sag grade change).
 - (d) Minimum requirements for car park dimensions to be in accordance with Table 2.
 - (e) Clearance to car parking spaces to be in accordance with Diagram 1 in relation to the placement of a wall, fence, column, tree, tree guard or any other structure that abuts a car space.
- 41 Bicycle parking facilities shall generally follow the design and signage requirements set out in Clause 52.34 of the Monash Planning Scheme.
- 42 Before the development starts, a Construction Management Plan must be prepared and submitted to the responsible authority for approval. The plan must be to the satisfaction of the responsible authority. Once approved, the plan must be implemented to the satisfaction of the responsible authority. The plan must address the following issues:
- (a) measures to control noise, dust and water runoff;
 - (b) prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
 - (c) the location of where building materials are to be kept during construction;
 - (d) the location of site services and constructions sheds;
 - (e) site security;
 - (f) maintenance of safe movements of vehicles to and from the site during the construction phase;
 - (g) the provision of car parking for vehicles associated with construction of the development;

- (h) wash down areas for trucks and vehicles associated with construction activities;
- (i) cleaning and maintaining surrounding road surfaces;
- (j) a requirement that construction works must only be carried out during the following hours:
 - Monday to Friday (inclusive) – 7.00am to 6.00pm;
 - Saturday – 9.00am to 1.00pm;
 - Saturday – 1.00pm to 5.00pm (only activities associated with the erection of buildings. This does not include excavation or the use of heavy machinery.)

VicRoads condition (ref: 18786/16)

- 43 The proposed crossovers to Warrigal Road and Princess Highway are to be constructed to the satisfaction of the responsible authority and at no cost to the Roads Corporation prior to the occupation of the development hereby approved.
- 44 The proposed crossovers to Warrigal Road and Princess Highway should be flared at 60 degrees with 3.0m radial turnouts at the kerb and with 1.0 clearance from any fixed object at the entrance of the property.
- 45 Landscaping and structures within the pedestrian visibility splays must be maintained at a height no greater than 900mm.

Public Transport Victoria condition (File: F0L/16/34102)

- 46 The permit holder must take all reasonable steps to ensure that disruption to bus operations along Warrigal Road is kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation measures must be communicated to Public Transport Victoria fourteen days (14) prior.
- 47 This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
 - The development is not started before 2 years from the date of issue.
 - The development is not completed before 4 years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

– End of conditions –