

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P1986/2017

<b>APPLICANT</b>	Frankcom Street Blackburn Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Whitehorse City Council
<b>RESPONDENTS</b>	Robyn Majorie Nicholls, Jo-Ann Lewis, Blackburn Village Residents Group Inc.
<b>SUBJECT LAND</b>	9-13 Frankcom Street BLACKBURN VIC 3130
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	S. R. Cimino, Member
<b>HEARING TYPE</b>	Compulsory conference
<b>DATE OF HEARING</b>	28 November and 15 December 2017
<b>DATE OF ORDER</b>	19 December 2017

**ORDER**

- 1 Pursuant to section 87 of the *Victorian Civil and Administrative Tribunal Act* 1998 and with the agreement of all parties present at the compulsory conference, the following person is struck out as a party to the proceeding because he failed to attend the compulsory conference as directed by the Tribunal:  

Gabriel Davis
- 2 In permit application WH/2016/1172 a permit is granted and directed to be issued for the land at 9-13 Francom Street BLACKBURN VIC 3130 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:  

Construction of residential apartment building comprising up to 35 dwellings
- 3 The hearing listed to commence on **29 January 2018** is cancelled and the dates vacated

S. R. Cimino  
**Member**

**APPEARANCES:**

For Applicant	Mr A. Natoli, solicitor, Equipe Lawyers
For Responsible Authority	Mr D. Um, planning consultant, Kontext Pty Ltd
For Respondents	Ms Robyn Marjorie Nicholls and Ms Jo-Ann Lewis in person Mr David Morrison for Blackburn Village Residents Group Inc.

## REASONS

- 1 This matter relates to an application under Section 79 of the *Planning and Environment Act 1987* to review the Whitehorse City Council's failure to grant a permit within the prescribed time for the construction of an apartment building on the subject land.
- 2 This order is made at the request of the parties and with their consent as an outcome of a compulsory conference. This includes an order striking out Mr Davis as a party as he did not attend either of the compulsory conferences as directed. I find that Mr Davis should be struck out as his failure to attend causes disadvantage to the other parties who attended the compulsory conferences as directed, and ultimately reached agreement.
- 3 The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
  - the responsible authority is of the opinion that the permit is appropriate having regard to the matters it is required to consider under section 60 of the Act, including the balanced application of the strategies and policies of the relevant planning scheme and is otherwise in conformity with the provisions of the planning scheme and the *Planning and Environment Act 1987*;
  - the proposed orders will not result in any change to the proposed use or development which would materially affect any person other than the parties to the proceeding.
- 4 Based on the information available to the Tribunal, including the discussion at the compulsory conference, I consider it is appropriate to make these orders pursuant to Section 93 of the *Victorian Civil and Administrative Tribunal Act 1998*.

S. R. Cimino  
**Member**

**APPENDIX A**

<b>PERMIT APPLICATION NO:</b>	WH/2016/1172
<b>LAND:</b>	9-13 Francom Street BLACKBURN VIC 3130
<b>WHAT THE PERMIT ALLOWS:</b>	
Construction of residential apartment building comprising up to 35 dwellings in accordance with the endorsed plans.	

**CONDITIONS**

- 1 Before the development starts, or any trees or vegetation are removed, amended plans (three copies) must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale, with dimensions, and be generally in accordance with the plans (TP004 to TP017, inclusive), prepared by David Watson Architects, Revision 03, dated 13 December 2017 and the landscape plan (L-VCAT01 Rev B) dated 13 December 2017, prepared by John Patrick Landscape Architects Pty Ltd but modified to show:
  - (a) Except with the further written consent of the Responsible Authority, five visitor car parking spaces located on the Basement Level 1 (TP006) must be relocated to Lower Ground Floor.
  - (b) Any changes required as a result of the amended Waste Management Plan in accordance with Condition 4.
  - (c) The locations of Tree Protection Zones described in condition 5, with all nominated trees clearly identified and numbered on both site and landscape plans, and the requirements of conditions 5 and 6 to be annotated on the development and landscape plans.
  - (d) Tree 36 along with its TPZ and SRZ.
  - (e) Changes to reflect all sustainability features indicated in the submitted, amended and approved Sustainability Management Plan (SMP). Where features cannot be visually shown, include notes providing details of the requirements (i.e. all rainwater tank end uses, number of toilets, etc.) The plans are to be generally in accordance with the plans submitted with the application but modified to show and in accordance with the amended Sustainability Management Plan required by Condition 8:

- (i) All operable windows, doors, winter garden openings & vents in elevation drawings
  - (ii) 20 kW solar photovoltaic panels as detailed in the SMP
  - (iii) 39 bicycle parking spaces.
  - (iv) All water sensitive urban design measures identified in MUSIC, including rainwater tanks of no less than 20 kL for supplying toilet flushing to apartments with a total of 29 bedrooms, and 40 kL for supplying irrigation and general wash down; ensure all rainwater end-uses are noted as detailed in the SMP.
- (f) A notation referring to the Parking Management Plan required in accordance with Condition 9.
  - (g) A notation referring to the Landscape Maintenance Plan required in accordance with Condition 7.
  - (h) The location of columns within the car park are to be designed in accordance with Clause 52.06-8 of the Whitehorse Planning Scheme;
  - (i) The proposed ramp grade from the property line is to be a maximum of 1:10 for the first 5m as required by Clause 52.06-8 of the Whitehorse Planning Scheme;
  - (j) The circular ramp grades and width are required to be in accordance with section 2.5 and 3.3 of AS 2890.1. This is to be demonstrated by providing a longitudinal section of the proposed inner radius of the ramps;
  - (k) The vertical headroom at the entry point and throughout the car park is to be a minimum of 2.2m throughout the parking area which is to be demonstrated by the provision of a longitudinal section;
  - (l) A detailed schedule of all external cladding colours, textures, finishes, and materials.
  - (m) Location of services/roof plant, and details of screening.
  - (n) Relocation of the air conditioning unit for dwelling 26 to the balcony of that dwelling.

All of the above must be to the satisfaction of the Responsible Authority. Once approved these plans become the endorsed plans of this permit.

- 2 The layout of the site and the size, design and location of the buildings and works permitted must always accord with the endorsed plan and must not be altered or modified without the further written consent of the Responsible Authority.
- 3 Prior to the commencement of the development, an Acoustic Report must be prepared by a suitably qualified acoustic consultant and submitted to the Responsible Authority for approval. The Acoustic Report must address any

necessary measures to ensure that the apartments meet Standard D16 of Clause 58.04-3 of the Whitehorse Planning Scheme.

- 4 Prior to the commencement of development, an amended Waste Management Plan must be submitted to and approved by the Responsible Authority. The changes must be prepared and submitted to Council for approval. This plan is to be to the satisfaction of the Responsible Authority and must provide for:
- (a) Waste collection to be completed by private waste collection service.
  - (b) Waste collection vehicles are to enter and leave the development car park area off Frankcom Street.
  - (c) Council issued waste bins will not to be required to be supplied for this development.

Once submitted and approved the Waste Management Plan will form part of the documents for the planning permit.

- 5 Prior to the commencement of any building and or demolition works on the land, a Tree Protection Zone (TPZ) must be established and maintained during and until completion of all buildings and works including landscaping, around the following trees in accordance with the distances and measures specified below, to the satisfaction of the Responsible Authority:
- (a) Tree protection zone distances:
    - (i) Tree 9 – 2.6 metre radius from the centre of the tree base.
    - (ii) Tree 19 – 7.8 metre radius from the centre of the tree base.
    - (iii) Tree 21 – 2.0 metre radius from the centre of the tree base.
    - (iv) Tree 33 – 11.1 metre radius from the centre of the tree base.
    - (v) Tree 38 – 2.0 metre radius from the centre of the tree base.
  - (b) Tree protection zone measures are to be established in accordance to Australian Standard 4970-2009 and including the following:
    - (i) Erection of solid chain mesh or similar type fencing at a minimum height of 1.8 metres held in place with concrete feet.
    - (ii) Signage placed around the outer edge of perimeter fencing identifying the area as a TPZ. The signage should be visible from within the development, with the lettering complying with AS 1319.
    - (iii) Mulch across the surface of the TPZ to a depth of 100mm and undertake supplementary watering in summer months as required.

- (iv) No excavation, constructions works or activities, grade changes, surface treatments or storage of materials of any kind are permitted within the TPZ unless otherwise approved within this permit or further approved in writing by the Responsible Authority.
- (v) All supports and bracing should be outside the TPZ and any excavation for supports or bracing should avoid damaging roots where possible.
- (vi) No trenching is allowed within the TPZ for the installation of utility services unless tree sensitive installation methods such as boring have been approved by the Responsible Authority.
- (vii) Where construction is approved within the TPZ, fencing and mulching should be placed at the outer point of the construction area.
- (viii) Where there are approved works within the TPZ, it may only be reduced to the required amount by an authorised person only during approved construction within the TPZ, and must be restored in accordance with the above requirements at all other times.

- 6 During the construction of any buildings or works, the following tree protection requirements must be carried out to the satisfaction of the responsible Authority:
- (a) All buildings and works for the demolition of the site and construction of the development (as shown on the endorsed plans) must not alter the existing ground level or topography of the land within greater than 10% of the TPZs of Trees 19.
  - (b) For Tree 9, no roots are to be cut or damaged during any part of the construction process.
  - (c) All buildings and works (including landscape works) for the demolition of the site and construction of the development (as shown on the endorsed plans) must not alter the existing ground level or topography of the land within greater than 10% of the TPZs of Trees 21, 33 and 38.
- 7 Prior to commencement of buildings and works including demolition a Landscape Maintenance Plan is to be prepared to the satisfaction of the Responsible Authority. This must reference the Landscape Plan referred to in Condition 10 and include details of how existing and proposed vegetation is to be maintained. This plan must make provision for the retention, maintenance in accordance with relevant Australian Standards (AS 4970-2009), and appropriate replacement of existing vegetation nominated for retention to achieve the intent and objective of landscape plan to maintain a

visual screening of the built form. Once submitted and approved the Landscape Maintenance Plan will form part of the documents for the planning permit.

- 8 Prior to the commencement of any buildings or demolition works, an amended Sustainability Management Plan (SMP) must be submitted to and approved by the Responsible Authority. This SMP must be generally in accordance with the SMP submitted with the application, but amended to include the following:
- (a) A complete, published BESS Report, with a total score of no less than 60% with 'pass' marks in the categories of Water, Energy, Stormwater and IEQ.
  - (b) A valid STORM Rating Report or equivalent, with treatment measures to include rainwater tanks of no less than 20 kL for toilet for apartments with a minimum of 29 bedrooms and 40 kL for irrigation.
  - (c) Solar photovoltaic panels no less than 20 kW.
  - (d) Water efficient fixtures to include 4 star toilets, 5 star basin and kitchen taps and showers with a flow rate of no more than 7.5 litres per minute.
  - (e) Commitment to control all common, lift and service area lighting with daylight and motion sensors and/or timers.
  - (f) Commitment to control at least 75% of car park lighting with motion sensors
  - (g) Commitment to control service and lift area ventilation with timers or sensors as appropriate

to the satisfaction of the Responsible Authority

- 9 Prior to construction works commencing a parking management plan is to be submitted to the satisfaction of Council and shall include:
- (a) Designate parking spaces to the individual tenancies/dwellings;
  - (b) Detail the signing and line marking of parking spaces;
  - (c) Detail how access to the proposed parking spaces will be secured for residential and visitor use; and
  - (d) Detail any access controls to the parking area, such as boom gates which shall take into account the required queue length required as per section 3.4 of AS 2890.1.
- 10 Landscaping in accordance with the approved Landscape Plan must be completed before the building is occupied. The garden areas shown on the endorsed plan and schedule shall only be used as gardens and shall be maintained in a proper, tidy and healthy condition to the satisfaction of the Responsible Authority. Should any tree or shrub be removed or destroyed it

must be replaced by a tree or shrub of similar size and variety to the satisfaction of the Responsible Authority.

- 11 The development must provide the capacity for television signal distribution to each dwelling and any satellite dish, antenna or similar structure must be designed and located at a single point to the satisfaction of the Responsible Authority.
- 12 All building plant and equipment on the roofs, balcony areas, roof top deck, common areas, and public thoroughfares is to be concealed to the satisfaction of the Responsible Authority. Noise emitting plant equipment such as air conditioners, must be shielded with acoustic screening to prevent the transmission of noise having detrimental amenity impacts. The construction of any additional plant, machinery or other equipment, including but not limited to all service structures, down pipes, aerials, satellite dishes, air-conditioners, equipment, ducts, flues, all exhausts including car parking and communication equipment must include appropriate screening measures to the satisfaction of the Responsible Authority.
- 13 The requirements of the endorsed Waste Management Plan must be implemented by the building manager, owners and occupiers of the site for the duration of the building's operation in accordance with this permit, to the satisfaction of the Responsible Authority.
- 14 Prior to the demolition and commencement of buildings or works on the land, a Construction Management Plan, prepared by an experienced person or firm, detailing how the owner will manage the environmental and construction issues associated with the development, must be submitted to and approved by Council.

This must include detailed arrangements for construction worker parking which is to be accommodated on site. Alternatively, onsite tool storage to be provided with transport from another site for workers. No on-street parking apart from work zone for large deliveries associated with the development.

This must also include work plan for truck movements, road closures and community notification processes.

This plan is to be to the satisfaction of the Responsible Authority and must be prepared in accordance with the City of Whitehorse Construction Management Plan Guidelines. Once submitted to and approved by the Responsible Authority the Construction Management Plan will form part of the documents endorsed as part of this planning permit.

When approved the Construction Management Plan will form part of this permit and must be complied with, to the satisfaction of the Responsible Authority, to the extent that this is in the control of the owner of the land. The owner of the land is to be responsible for all costs associated with the

works to be undertaken in accordance with the requirements of the Construction Management Plan.

- 15 All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority, and the approved dwellings must operate in accordance with this Plan, to the satisfaction of the Responsible Authority. No alterations to the Reports may occur without the written consent of the Responsible Authority.
- 16 Prior to the occupation of any dwelling approved under this permit, a report from the author of the Sustainability Management Plan, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Reports have been implemented in accordance with the approved plan.
- 17 All external lights must be of a limited intensity to ensure no nuisance is caused to adjoining or nearby residents and fauna and must be provided with baffles, so that no direct light or glare is emitted outside the site, to the satisfaction of the Responsible Authority.
- 18 All stormwater drains must be connected to a point of discharge to the satisfaction of the Responsible Authority.
- 19 Prior to any works, design plans and specifications of the civil works within the site associated with the development are to be prepared by a registered consulting engineer (who is listed on the Engineers Australia National Professional Engineer Register), and submitted to the Responsible Authority. Certification by the consulting engineer that the civil works have been completed in accordance with the design plans and specifications must be provided to the Responsible Authority.
- 20 Detailed plans and computations for stormwater on-site detention (if required) and connection to the point of discharge must be prepared by a registered consulting engineer (who is listed on the Engineers Australia National Professional Engineer Register) and submitted for approval by the Responsible Authority prior to the commencement of any works.
- 21 Stormwater connection to the nominated point of discharge and stormwater on-site detention (if required) must be completed and approved to the satisfaction of the Responsible Authority prior to the occupation of the buildings.
- 22 As-constructed drawings prepared by a Licensed Land Surveyor are to be provided to Council after the completion of the civil works prior to Statement of Compliance or occupation.
- 23 Stormwater that could adversely affect any adjacent land shall not be discharged from the subject site onto the surface of the adjacent land.

- 24 The Applicant/Owner shall be responsible to meet all costs associated with reinstatement and/or alterations to Council or other Public Authority assets deemed necessary by such Authorities as a result of the development. The Applicant/Owner shall be responsible to obtain an "Asset Protection Permit" from Council at least 7 days prior to the commencement of any works on the land and obtain prior specific written approval for any works involving the alteration of Council or other Public Authority assets.

### **Melbourne Water**

- 25 The dwellings must be constructed with finished floor levels a minimum of 300mm above the applicable flood level of 83.35 metres to Australian Height Datum (AHD).
- 26 The entry / exit driveway of the basement car park must incorporate a flood proof apex of a minimum of 300mm above the applicable flood level of 83.35m to AHD.
- 27 All external doors, windows, vents and openings to the basement car park must be constructed a minimum of 300mm above the applicable flood level of 83.35m to AHD with exception of any basement entry/exit that is protected by an apex.
- 28 Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the AHD, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.
- 29 The depth of flooding created due to the volume cuts should be no greater than 1m at the rear of the building.
- 30 No fill is to be placed outside of the building footprint.
- 31 All structures that are below flood level must be fully waterproofed.
- 32 Prior to the commencement of works, a Flood Response Plan must be submitted to the Responsible Authority and Melbourne Water by an accredited risk management professional.
- 33 Prior to the commencement of works, a separate application, direct to Melbourne Water's Asset Services team, must be made for any new or modified stormwater connection to a Melbourne Water asset.
- 34 The depth of the footings must be adequate to satisfy the angle of repose relative to the drain as per Melbourne Water's specification. Refer to Melbourne Water's Standard Drawing: 'Angle of Repose - Footing Design' for details.

### **Expiry**

- 35 This permit will expire if one of the following circumstances applies:
- (a) the development is not commenced within two (2) years from the date of issue of this permit;

- (b) the development is not completed within four (4) years from the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing pursuant to the provisions of Section 69 of the *Planning and Environment Act 1987*.

**End of conditions**