

Attachment 1 - Planning Permit

Helping you understand your planning needs



PLANNING PERMIT

Permit No: PLN17/0705

Planning Scheme: Yarra

Responsible Authority: City Of Yarra

ADDRESS OF THE LAND:

388-390 Queens Pde Fitzroy North VIC 3068

THE PERMIT ALLOWS:

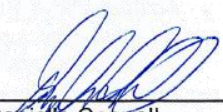
Development of the land with a five storey building comprising of a ground floor restaurant and first floor offices and three dwellings above, including car parking for four vehicles located in a stack at the rear of the existing building, including demolition works within a heritage overlay and a reduction in car parking requirements and construction of a sign in a heritage overlay in accordance with the endorsed plans.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

Amended Plans

- 1 Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the plans TP01 to TP10 (inclusive), prepared by dca design, Revision B, dated AUG 2018, but modified to show:
 - (a) The paint finishes marked PO1, PO3 and PO4 be changed to a light colour within a white to grey palette.
 - (b) A high quality finish to the commercial roller door to the garage.
 - (c) Delete northern planter box on level 02
 - (d) The sill heights of windows to the ensuites and bedrooms on the rear boundary of levels 03 and 04 be annotated at 1.5m and 1.8m respectively.
 - (e) The plans be annotated to show no plant or equipment within 5.0m of the rear property boundary.
 - (f) All habitable room windows as operable.

Date: 19 September 2018



 Danielle Connell
 Signature for the Responsible Authority

Planning and Environment Regulations 2015 No. 33/2015 Form 4 Sections 63, 64 64A and 86

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- (g) Updated schedule of materials, colours and finishes and colour elevations.
 - (h) Provision of storage in accordance with Table D6 of Clause 58 of the Yarra Planning Scheme.
 - (i) The model and type of car stacker specified on the drawings and must utilise a model with a minimum user platform width of 4.8 metres (2.4 metres in width for each platform).
 - (j) Car spaces have clearance heights of no less than 1.8 metres for at least 25 % of the mechanical car parking spaces and satisfy Design standard 4: Mechanical parking of Clause 52.06-9 of the Yarra Planning Scheme.
 - (k) The garage doorway width and headroom clearance dimensioned on the plans.
 - (l) All plant and equipment to be concealed from the public realm.
 - (m) Any amendments consequent to the amended sustainable management plan pursuant to Condition 4 of this Permit.
 - (n) All south-facing habitable room windows along the elevation to have a minimum transparency of 25%.
 - (o) Provision of adaptable bathrooms in accordance with Table D4 of Clause 58 of the Yarra Planning Scheme.
- 2 The use and development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

Amended Sustainable Management Plan

- 3 Before the development commences, an amended Sustainable Design Assessment (SDA) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the SDA will be endorsed and will form part of this permit. The SDA must:
- (a) Reference the plans endorsed plans under condition 1 of this permit.
 - (b) Require all habitable room windows be operable.
- 4 The provisions, recommendations and requirements of the endorsed Sustainable Design Assessment must be implemented and complied with to the satisfaction of the Responsible Authority.

Amended Waste Management Plan

- 5 Before the development commences, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Sustainable Development Consultants dated 04/12/17, but modified to include:

Date: 19 September 2018



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Signature for the Responsible Authority

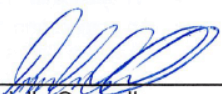
Attachment 1 - Planning Permit

- (a) Dimensions of the bin store room demonstrating that the receptacles can fit and are adequately manoeuvrable.
 - (b) A kerbside collection point for Council service or a new location to the satisfaction of the Responsible Authority for private collection.
- 6 The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Infrastructure Works

- 7 Within three months of commencement of the development, detailed engineering documentation to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The detailed engineering documentation must show:
- (a) Design for the vehicle crossing in accordance with the ground clearance requirements for the B99 design vehicle.
- 8 Before the building is occupied, all works required by condition 7 must be fully constructed and completed to the satisfaction of the Responsible Authority and at no cost to Council.
- 9 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated:
- (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.
- 10 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating access to the pedestrian and vehicular entrances must be provided on the subject site. Lighting must be:
- (a) located;
 - (b) directed;
 - (c) shielded; and
 - (d) of limited intensity,
- to the satisfaction of the Responsible Authority.
- 11 Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.
- 12 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
- 13 Before the building is occupied, all pipes, fixtures, fittings and vents servicing any building on the land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.

Date: 19 September 2018



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Signage

- 14 The location and details of the sign, including the supporting structure, as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.
- 15 The sign must not include any flashing or intermittent light.
- 16 The sign must be constructed and maintained to the satisfaction of the Responsible Authority.


Construction hours

- 17 Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
 - (a) Monday-Friday (excluding public holidays) before 7 am or after 6 pm,;
 - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
 - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.

Construction Management Plan

- 18 Before the development commences, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must provide for (as appropriate):
 - (a) A pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure.
 - (b) Works necessary to protect road and other infrastructure.
 - (c) Remediation of any damage to road and other infrastructure.
 - (d) Containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land.
 - (e) Facilities for vehicle washing, which must be located on the land.
 - (f) The location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street.
 - (g) Site security.
 - (h) Management of any environmental hazards including, but not limited to:
 - (i) contaminated soil;
 - (ii) materials and waste;
 - (iii) dust;
 - (iv) stormwater contamination from run-off and wash-waters;
 - (v) sediment from the land on roads;

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Attachment 1 - Planning Permit

- (vi) washing of concrete trucks and other vehicles and machinery; and
- (vii) spillage from refuelling cranes and other vehicles and machinery;
- (i) The construction program.
- (j) Preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency.
- (k) Parking facilities for construction workers.
- (l) Measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan.
- (m) An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services.
- (n) An emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced.
- (o) The provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads.
- (p) A Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible Authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:
 - (i) using lower noise work practice and equipment;
 - (ii) the suitability of the land for the use of an electric crane;
 - (iii) silencing all mechanical plant by the best practical means using current technology;
 - (iv) fitting pneumatic tools with an effective silencer;
 - (v) other relevant considerations; and
 - (vi) any site-specific requirements.

During the construction:

- (q) Any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines.
- (r) Stormwater drainage system protection measures must be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the land enters the stormwater drainage system.
- (s) Vehicle borne material must not accumulate on the roads abutting the land.
- (t) The cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads.

Date: 19 September 2018



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- (u) All litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.
- 19 The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Permit Expiry

20 This permit will expire if:

- (a) The development is not commenced within two years of the date of this permit;
- (b) The development is not completed within four years of the date of this permit; or

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

Notes:

A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5585 to confirm.

A local law permit (e.g. asset protection permit, road occupation permit) may be required before development is commenced. Please contact Council's Construction Management Branch on Ph. 9205 5585 to confirm.

Provision must be made for drainage of the site to a legal point of discharge. Please contact Council's Building Services on 9205 5585 for further information.

All future property owners, residents, within the development approved under this planning permit will not be permitted to obtain resident or visitor parking permits.

In accordance with the Yarra Planning Scheme, a 4.5 per cent public open space contribution will apply in the event of the subdivision of the land.

THIS PERMIT WAS ISSUED AT THE DIRECTION OF VCAT AS FOLLOWS:

Date of Order

14 September 2018

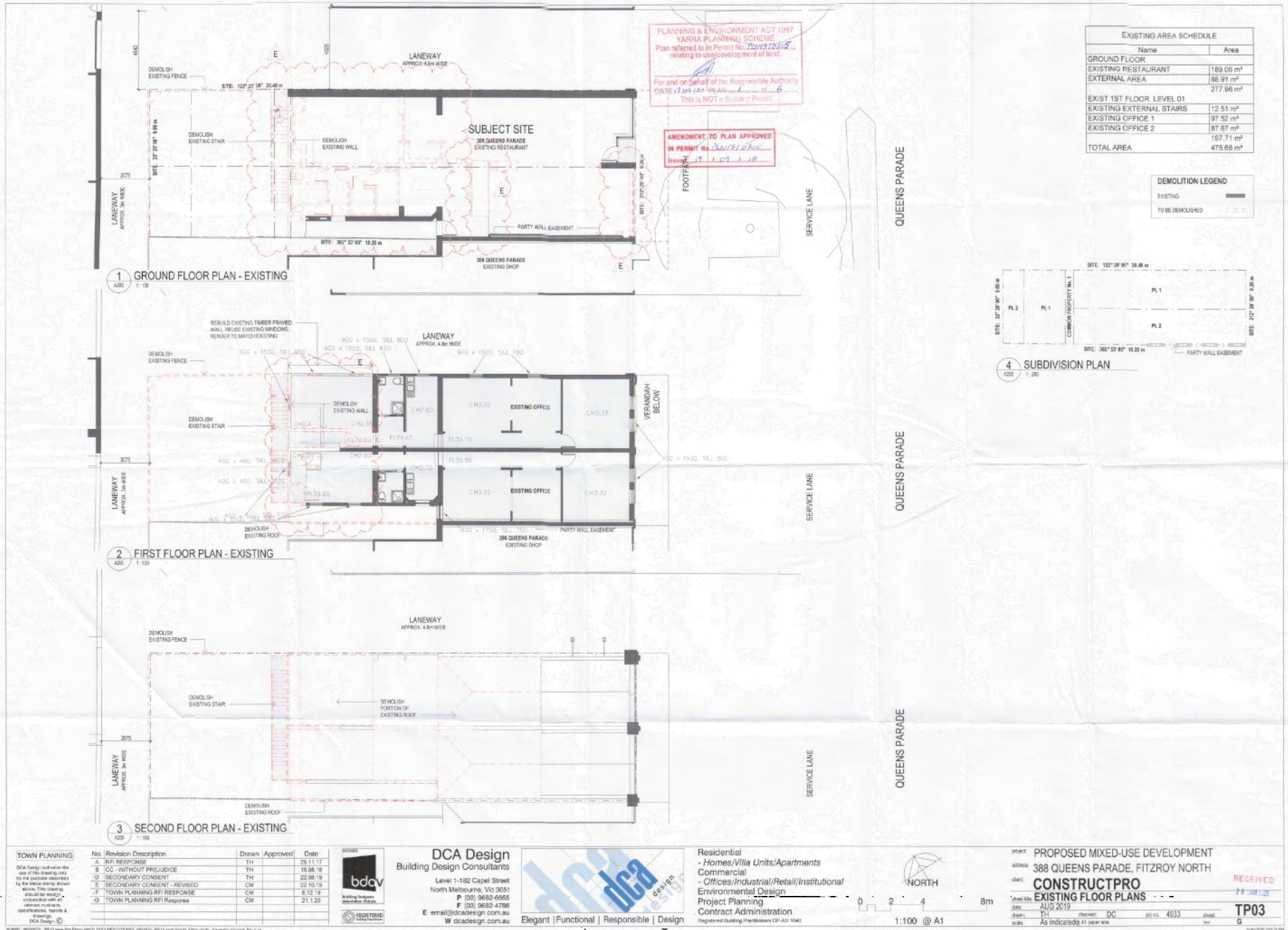
Planning Permit PLN17/0705 was issued in accordance with the order of the Victorian Civil and Administrative Tribunal, reference: P1074/2018.

Date: 19 September 2018

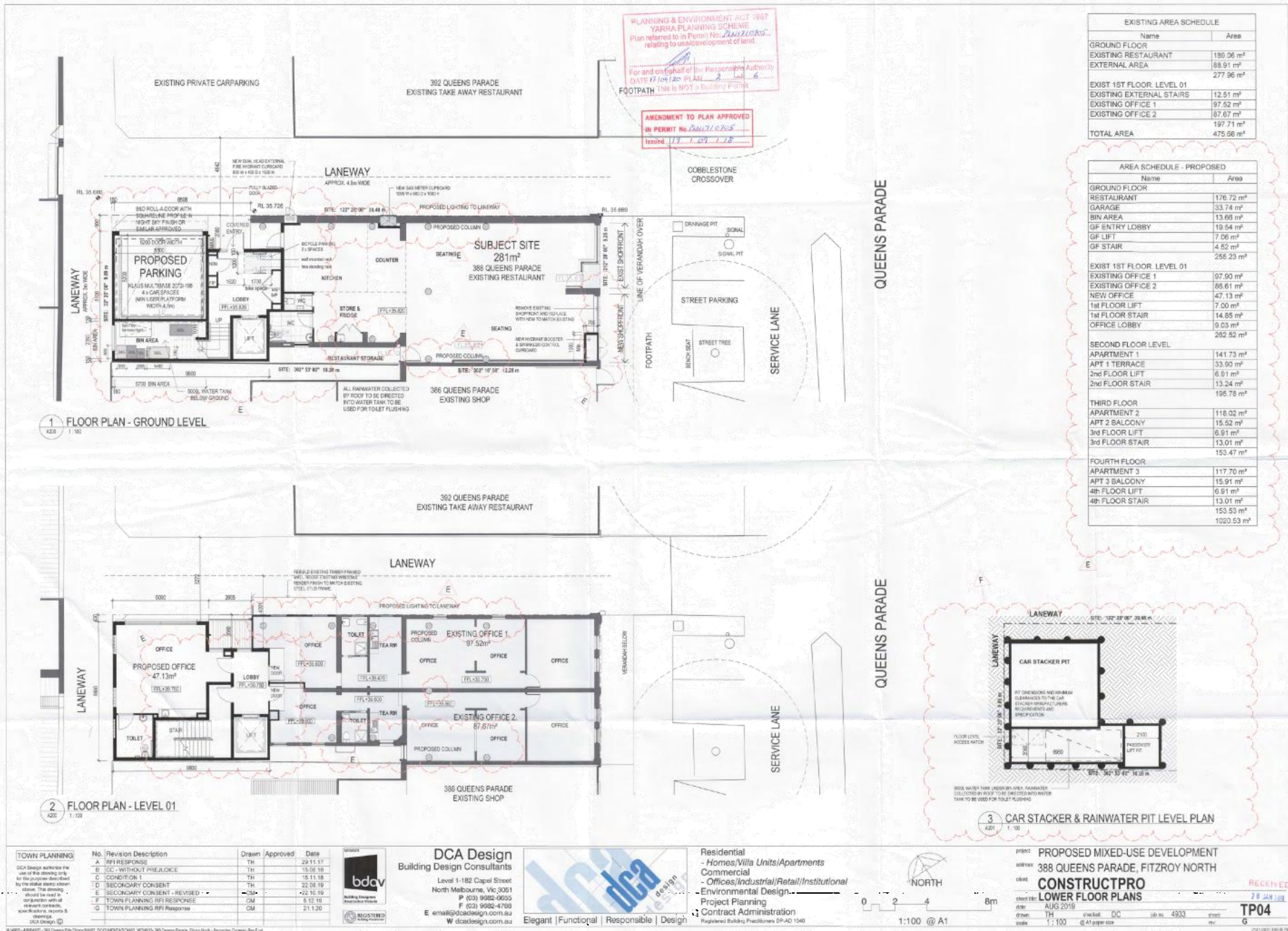


Danielle Connell
Signature for the Responsible Authority

Attachment 2 - Endorsed Plans



Attachment 2 - Endorsed Plans



PLANNING & ENVIRONMENT ACT 1987
 YARRA PLANNING SCHEME
 Plan referred to in Form No. 220/2015
 relating to development of land.
 For and on behalf of the Responsible Authority
 DATE 17 Jan 2016 PLAB: A and 6
 This is NOT a Building Permit

AMENDMENT TO PLAN APPROVED
 IN PERMIT No. 2014/10205
 Issued 13 OCT 2015

EXISTING AREA SCHEDULE	
Name	Area
GROUND FLOOR	
EXISTING RESTAURANT	180.06 m ²
EXTERNAL AREA	88.91 m ²
	277.96 m ²
EXIST 1ST FLOOR LEVEL 01	
EXISTING EXTERNAL STAIRS	12.51 m ²
EXISTING OFFICE 1	97.52 m ²
EXISTING OFFICE 2	87.67 m ²
	197.71 m ²
TOTAL AREA	475.68 m ²

AREA SCHEDULE - PROPOSED	
Name	Area
GROUND FLOOR	
RESTAURANT	176.72 m ²
GARAGE	33.74 m ²
BIN AREA	13.66 m ²
GF ENTRY LOBBY	19.04 m ²
GF LIFT	7.06 m ²
GF STAIR	4.52 m ²
	255.23 m ²
EXIST 1ST FLOOR LEVEL 01	
EXISTING OFFICE 1	97.50 m ²
EXISTING OFFICE 2	85.61 m ²
NEW OFFICE	47.13 m ²
1st FLOOR LIFT	7.00 m ²
1st FLOOR STAIR	14.85 m ²
OFFICE LOBBY	0.03 m ²
	282.52 m ²
SECOND FLOOR LEVEL	
APARTMENT 1	141.73 m ²
APT 1 TERRACE	33.90 m ²
2nd FLOOR LIFT	6.51 m ²
2nd FLOOR STAIR	13.24 m ²
	195.78 m ²
THIRD FLOOR	
APARTMENT 2	118.02 m ²
APT 2 BALCONY	15.52 m ²
3rd FLOOR LIFT	6.91 m ²
3rd FLOOR STAIR	13.01 m ²
	153.47 m ²
FOURTH FLOOR	
APARTMENT 3	117.70 m ²
APT 3 BALCONY	15.91 m ²
4th FLOOR LIFT	6.91 m ²
4th FLOOR STAIR	13.01 m ²
	153.53 m ²
	1020.53 m ²

1 FLOOR PLAN - GROUND LEVEL
 A201 1:100

2 FLOOR PLAN - LEVEL 01
 A202 1:100

3 CAR STACKER & RAINWATER PIT LEVEL PLAN
 A203 1:100

TOWN PLANNING	No.	Revision Description	Drawn	Approved	Date
A	1	RPI RESPONSE	TH		29.11.17
B	2	DC - WITHOUT PREJUDICE	TH		30.09.16
C	3	CONSTRUCTION 1	TH		25.11.16
D	4	SECONDARY COMMENT	TH		22.08.16
E	5	SECONDARY COMMENT - REVISED	TH		22.10.16
F	6	TOWN PLANNING RPI RESPONSE	GM		1.12.16
G	7	TOWN PLANNING RPI RESPONSE	GM		21.12.16

DCA Design
 Building Design Consultants
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 North Melbourne, Vic. 3051
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 F (03) 9982-4708
 E email@dcaesign.com.au
 W dcaesign.com.au

REGISTERED
 Building Design
 Practitioner

Elegant | Functional | Responsible | Design

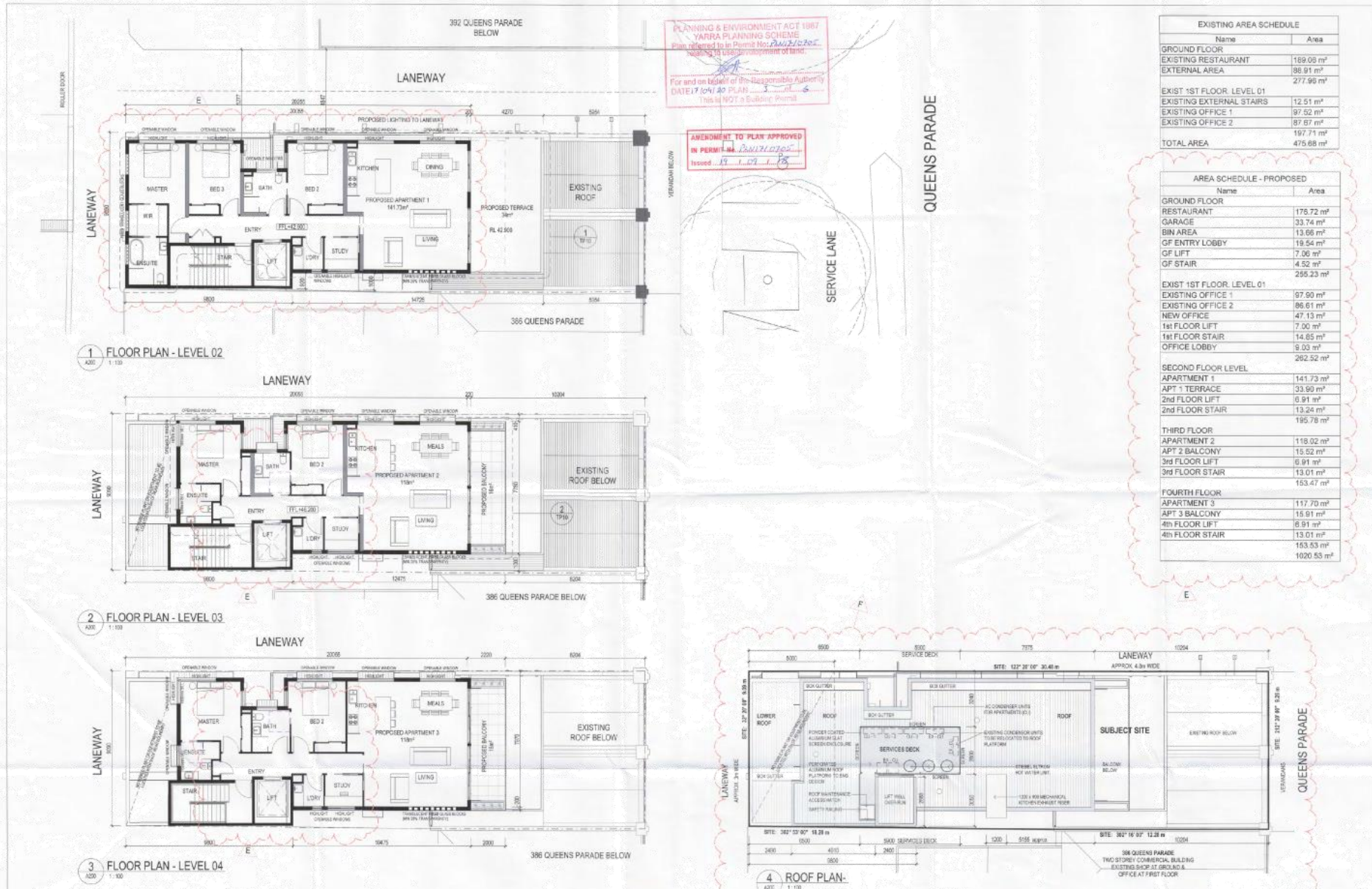
Residential
 - Homes/Villa Units/Apartments
 Commercial
 - Offices/Industrial/Retail/Institutional
 Environmental Design
 Project Planning
 Contract Administration
 Registered Building Practitioner DP-AD 1048

PROPOSED MIXED-USE DEVELOPMENT
 388 QUEENS PARADE, FITZROY NORTH
CONSTRUCTPRO
 LOWER FLOOR PLANS

PROJECT: 20 JAN 2016
 DRAWN: TH
 CHECKED: DC
 DATE: 1:100 @ A1

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 20 JAN 2016
 TP04
 G

Attachment 2 - Endorsed Plans



EXISTING AREA SCHEDULE	
Name	Area
GROUND FLOOR	
EXISTING RESTAURANT	169.09 m ²
EXTERNAL AREA	98.91 m ²
TOTAL	277.99 m ²
EXIST 1ST FLOOR, LEVEL D1	
EXISTING EXTERNAL STAIRS	12.51 m ²
EXISTING OFFICE 1	97.92 m ²
EXISTING OFFICE 2	87.67 m ²
TOTAL	197.71 m ²
TOTAL AREA	475.68 m ²

AREA SCHEDULE - PROPOSED	
Name	Area
GROUND FLOOR	
RESTAURANT	176.72 m ²
GARAGE	33.74 m ²
BIN AREA	13.06 m ²
GF ENTRY LOBBY	19.54 m ²
GF LIFT	7.00 m ²
GF STAIR	4.52 m ²
TOTAL	255.23 m ²
EXIST 1ST FLOOR, LEVEL 01	
EXISTING OFFICE 1	97.90 m ²
EXISTING OFFICE 2	96.61 m ²
NEW OFFICE	47.13 m ²
1st FLOOR LIFT	7.00 m ²
1st FLOOR STAIR	14.85 m ²
OFFICE LOBBY	9.03 m ²
TOTAL	262.52 m ²
SECOND FLOOR LEVEL	
APT 1 TERRACE	141.73 m ²
APT 1 TERRACE	33.90 m ²
2nd FLOOR LIFT	6.91 m ²
2nd FLOOR STAIR	13.24 m ²
TOTAL	195.78 m ²
THIRD FLOOR	
APT 2 BALCONY	118.02 m ²
APT 2 BALCONY	15.52 m ²
3rd FLOOR LIFT	6.91 m ²
3rd FLOOR STAIR	13.01 m ²
TOTAL	153.47 m ²
FOURTH FLOOR	
APT 3 BALCONY	117.70 m ²
APT 3 BALCONY	15.81 m ²
4th FLOOR LIFT	6.91 m ²
4th FLOOR STAIR	13.01 m ²
TOTAL	153.53 m ²

1 FLOOR PLAN - LEVEL 02
ASB 1:100

2 FLOOR PLAN - LEVEL 03
ASB 1:100

3 FLOOR PLAN - LEVEL 04
ASB 1:100

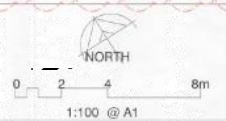
4 ROOF PLAN
ASB 1:100

TOWN PLANNING	No.	Revision Description	Drawn	Approved	Date
A	RFI RESPONSE		TH		29.11.17
B	DC - WITHOUT PRELUDE		TH		15.04.18
C	CONDITION 1		TH		15.11.18
D	SECONDARY CONSENT		TH		22.03.19
E	SECONDARY CONSENT - REVISED		CM		22.10.19
F	TOWN PLANNING RFI RESPONSE		CM		15.12.19
G	TOWN PLANNING RFI RESPONSE		CM		21.1.20

DCA Design
Building Design Consultants
Level 11-12 Capel Street
North Melbourne, Vic 3061
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E email@dcaesign.com.au
W dcaesign.com.au



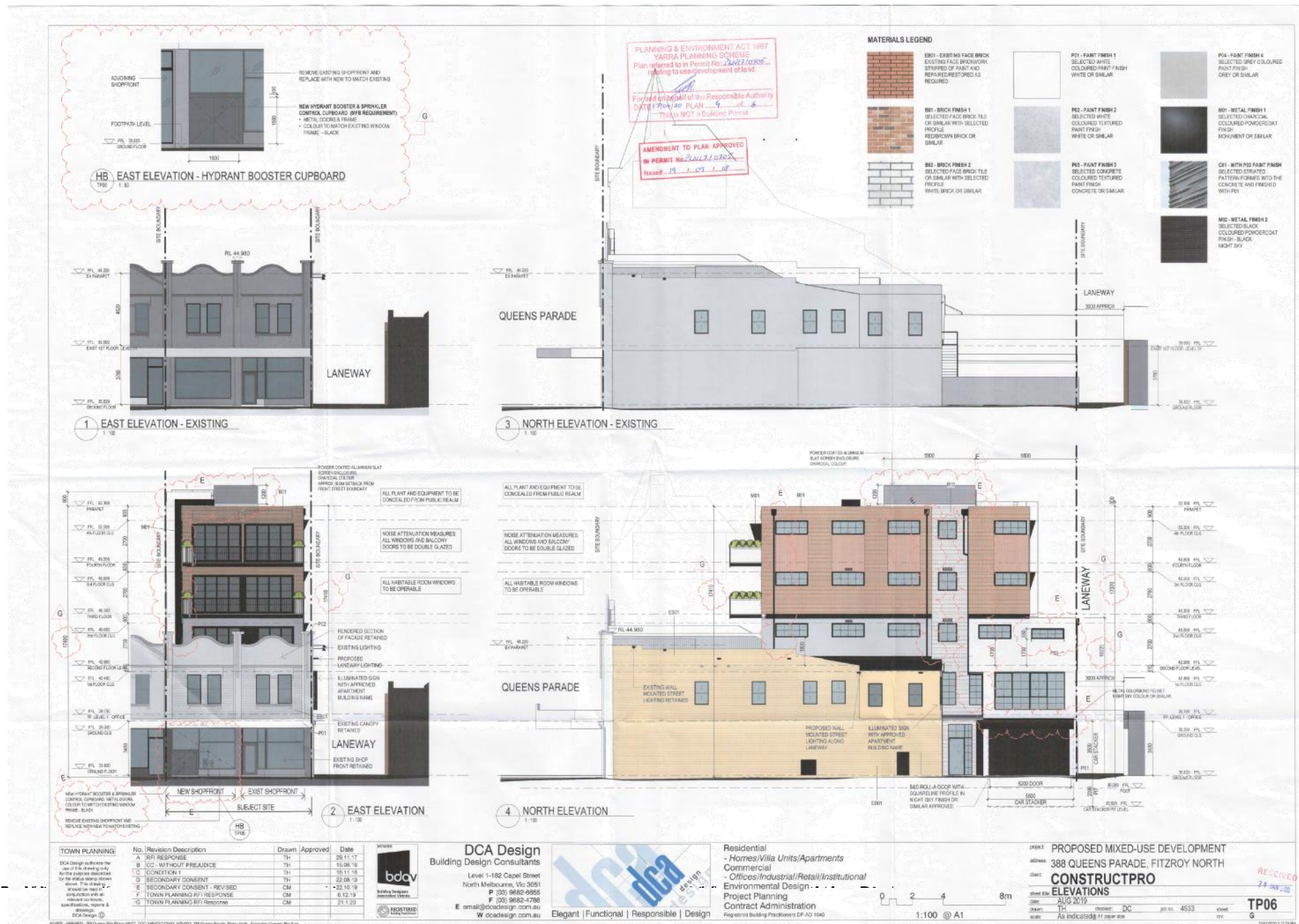
Residential - Homes/Villa Units/Apartments
Commercial - Offices/Industrial/Retail/Institutional
Environmental Design - Project Planning
Contract Administration
Registered Building Practitioner DP-AC 11642



PROPOSED MIXED-USE DEVELOPMENT
388 QUEENS PARADE, FITZROY NORTH
CONSTRUCTPRO
UPPER FLOOR PLANS
DATE: AUG 2019
DRAWN: TH
SCALE: 1:100
PROJECT: DC
JOB NO: 4533
SHEET: TP05
REV: G

19/08/2019 09:56:03 - 388 Queens Parade - Secondary Consent - 11/12/19 - 388 Queens Parade, Fitzroy North - Secondary Consent - 11/12/19

Attachment 2 - Endorsed Plans



TOWN PLANNING	No. / Revision Description	Drawn	Approved	Date
A	RPI RESPONSE	TH		26.11.17
B	DC - WITHOUT PREJUDICE	TH		15.06.18
C	TECHNICAL 1	TH		15.11.18
D	SECONDARY CONSENT	TH		22.08.19
E	SECONDARY CONSENT - REVISED	CM		22.10.19
F	TOWN PLANNING RPI RESPONSE	CM		12.12.19
G	TOWN PLANNING RPI RESPONSE	CM		21.12.20

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bdcv
Building Design Consultants Victoria

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dca DESIGN

Residential
- Homes/Villa Units/Apartments
Commercial
- Offices/Industrial/Retail/Institutional
Environmental Design
Project Planning
Contract Administration

Registered Building Practitioners EP-A0 1640

Elegant | Functional | Responsible | Design

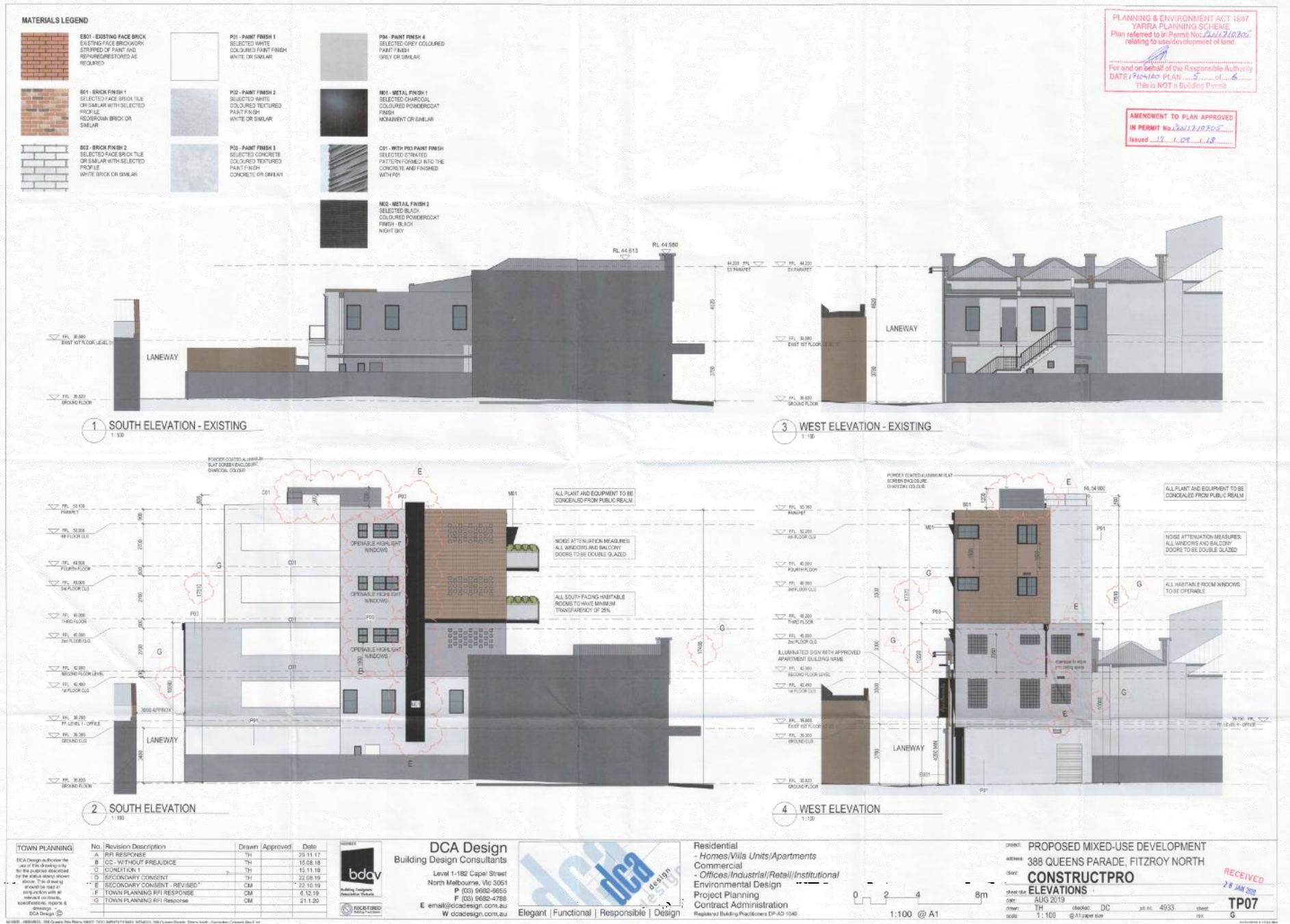
PROPOSED MIXED-USE DEVELOPMENT
388 QUEENS PARADE, FITZROY NORTH
CONSTRUCTRO
ELEVATIONS

DATE: AUG 2019
DRAWN: TH
CHECKED: DC
JOB NO: 4533
SHEET: G

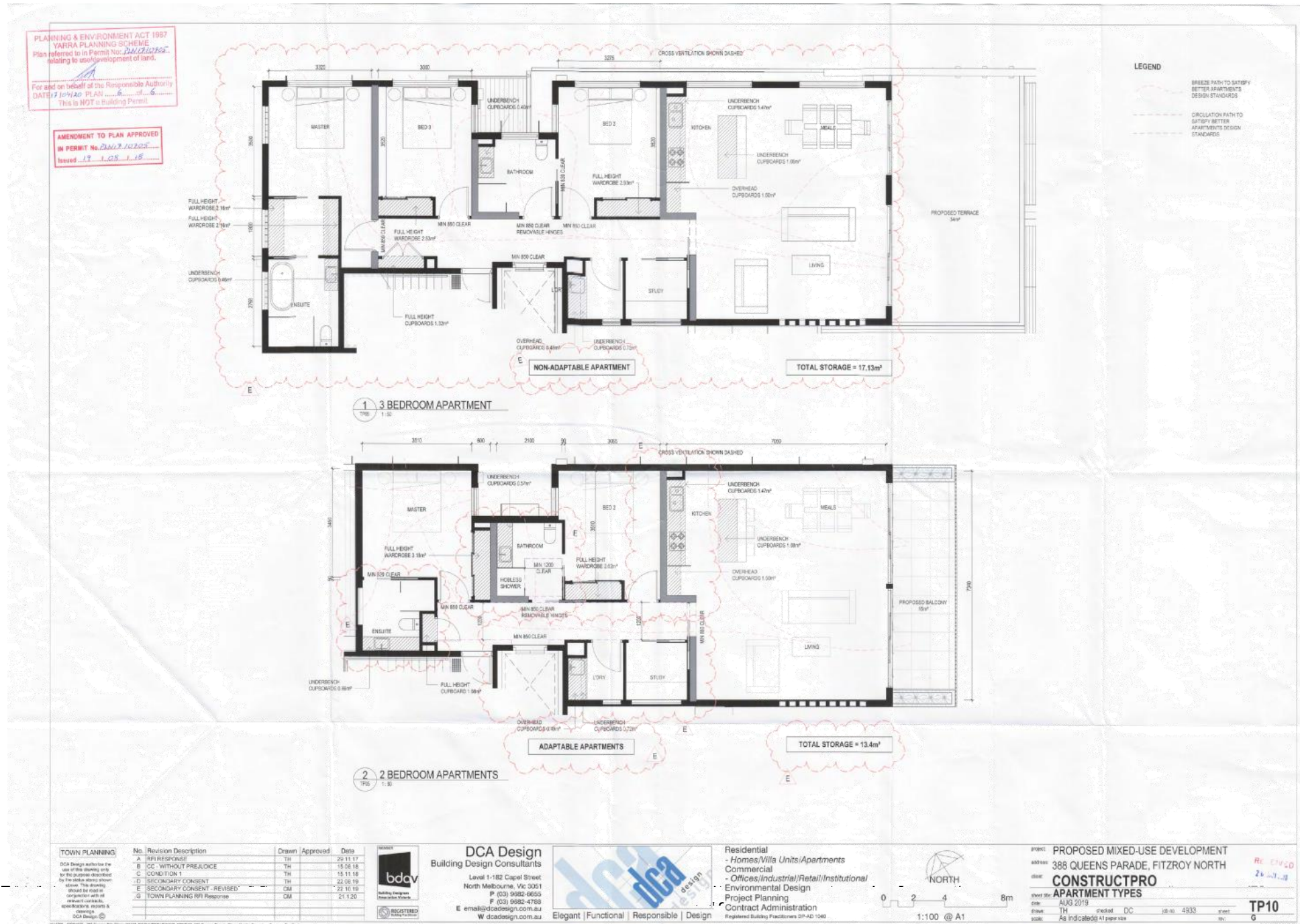
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RECEIVED
28 JUN 2019
TP06

Attachment 2 - Endorsed Plans



Attachment 2 - Endorsed Plans



Attachment 3 - Request for an Extension of Time



13 July 2020

Gary O'Reilly
Statutory Planning Branch
City of Yarra
PO Box 168, Richmond VIC 3121

Ref : PLN17/0705
Re : Extension of Time Request
At : 388 Queens Parade, Fitzroy North VIC 3068

Dear Gary,

I am writing to request an extension of time for the permit PLN17/0705 which is currently due to expire on **19 September 2020**. Our office has been working with a number of engineers and consultants to produce the documentation package for tender and construction. This has recently been completed but due to complications arising from the Covid-19 pandemic, construction has not yet been able to commence. The owners are committed to commencement and completion of the construction but there is still a lot of uncertainty ahead and we would like to request an extension of 2 additional years for both the commencement and completion dates (**commence by 19 September 2022 and complete by 19 September 2024**).

I hope that you will agree that this will allow the owners the chance to construct the permitted building and result in the best outcome for all involved.

Kind regards,

A handwritten signature in blue ink that reads 'T Hutchens'.

Tim Hutchens
Design Manager
DCA Design
Building Design Consultants
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DCA Design ABN 73 632 199 056
Building Design Consultants
Level 1/182 Capel Street
North Melbourne, Victoria 3051

P 03 9682 6655
E tim@dcaesign.com.au
W www.dcaesign.com.au

Attachment 4 - Additional information on EOT



10 November 2020

Garry O'Reilly
Statutory Planning
City of Yarra
PO Box 168
RICHMOND VIC 3121

Via email: Gary.OReilly@yarracity.vic.gov.au

Dear Mr. O'Reilly,

Re: Planning Permit No. PLN17/0705
Address: 388 Queens Parade, Fitzroy North

Glossop Town Planning acts on behalf of the permit holder in this matter.

We refer to the letter submitted by DCA Design (dated 13 July 2020) requesting an extension of time for planning permit PLN17/0705.

Condition 20 of the permit states that the permit will expire if the development has not started within two (2) years of the date of the permit and completed within four (4) years of the date of the permit.

The permit holder has requested an extension of two years to the commencement and completion dates (commence by 19 September 2022 and complete by 19 September 2024).

Since the extension of time request was lodged on 13 July 2020, we have passed the original commencement date of 19 September 2020.

The relevant working drawings have been completed and an application for Building Permit has been made. The permit holder is now ready to commence development immediately.

The State of Victoria has just exited a second period of lockdown due to the current public health emergency. As this Council knows, the speed and extent of the lockdown meant that many building projects were affected. While projects already underway were slowed, projects like this one could not commence at all.

Clearly, the permit holder could not have foreseen the extent and severity of these measures. The permit holder sought an extension early but was then prevented from commencing development when it became clear that the Council time frames to approve the extension were delayed.

These arguments notwithstanding, we understand that the Kantor principles as established in *Kantor v Murrindindi Shire Council 18 AATR 285* are relevant in considering a request of this nature. An assessment against the Kantor Principles is provided below.



Glossop Town Planning | PO Box 831, South Melbourne VIC 3205 | (03) 9329 2288 | glossopco.com.au

Attachment 4 - Additional information on EOT



Whether there has been a change of planning control or planning policy since the permit was granted and The probability of a permit issuing should a fresh application be made

On the 10 October 2020, Amendment C231 to the Yarra Planning Scheme was gazetted. Amendment C231 introduced a new Design and Development Overlay – Schedule 16 which replaced the existing Design and Development Overlay – Schedule 20.

Pursuant to the amended DDO16, the subject site is located within Precinct 4 'Activity Centre Precinct' (DDO16-4). The maximum building height for the subject site is 11 metres. This is a mandatory height that cannot be varied.

The building permitted under planning permit PLN17/0705 is 17.28 metres. This height would not be permitted under the amended DDO16-4.

As discussed in *AMV Homes Pty Ltd v Moreland CC VCAT 1699*, a change in policy in and of itself does not mean an extension of time must be refused. Rather, an application must be weighed against the principles of *Kantor v Murrindindi Shire Council 18 AATR 285*.

Whether the landowner is seeking to warehouse the permit

There is no evidence to suggest that the landowner is seeking to warehouse the permit.

The relevant work to obtain a building permit has been completed and the permit holder is ready to commence development immediately.

In addition, engineering plans were completed in 2019; approvals are in place from City West Water and the Council with respect to stormwater detention, drainage, sewerage and water and a builder has been appointed with a contract.

Intervening circumstances which bear upon the grant or refusal of the extension request

There have been several important intervening circumstances resulting in a delay to the commencement of construction. The following provides a history of the application since the permit was issued, including entirely unexpected and unavoidable intervening circumstances such as the Stage 4 lockdown of Metropolitan Melbourne and its consequential impact on building construction:

- **19 September 2018** - The planning permit was issued at the direction of VCAT.
- **1 April 2019** – An application for review under section 87A of the Planning and Environment Act was made to the VCAT to amend the planning permit.
- **12 April 2019** – A second application was made to VCAT for the matter to be heard in the Tribunal's Major Cases (MCL) list. The first application withdrawn on 1 May 2019 as a fresh application for review had been lodged in the MCL.
- **18 July 2019** – The second application for review was withdrawn at the instruction of the permit holder.
- **25 July 2019** - Plans were endorsed.
- **10 December 2019** - An application for a building permit was lodged.



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Attachment 4 - Additional information on EOT



- **January 2020** – arrangements were made to relocate the first floor office tenant at the subject site to allow construction to commence on site.
- **17 April 2020** - Secondary consent application approved by Council.
- **13 July 2020** – An extension of time request was lodged with the Council.
- **2 August 2020** – Metropolitan Melbourne entered Stage 4 lockdown in response to the COVID-19 pandemic. At this time, the construction and development industry was ordered to dramatically reduce the number of workers on-site for the period of the stage 4 lockdown. The restrictions put in place at this time included:
 - Maximum of 25% of normal employees on site compared to normal operations.
 - Must have a High Risk COVID Safe Plan.
 - Must demonstrate not blending shifts and workers can only work at one site during Stage 4.
- **19 September 2020** – The approved commencement date passed as construction could not lawfully commence.
- **10 October 2020** – Amendment C231 was gazetted into the Yarra Planning Scheme.
- **22 October 2020** - Received Certificate of Compliance for Proposed Building Work issued.

The total elapse of time since the permit was granted

The permit was granted on 19 September 2018, a total of two years and two months has now elapsed. The original extension of time request was made on 13 July 2020, prior to the expiration of the permit.

Had the extension of time request been processed within the statutory time frame of 60 days, Amendment C231 would not yet have been gazetted and the permit would not have lapsed.

An application for review to VCAT was not made regarding Council's failure to decide on the application at this time as reassurances were given from Council that the extension of time would be approved.

Whether the time limit originally imposed was adequate

The time limit originally imposed accorded with Section 68 of the Planning and Environment Act 1987, however, unexpected and entirely unpredictable circumstances associated with the current public health emergency meant that the time period was inadequate.



Attachment 4 - Additional information on EOT



The economic burden imposed on the landowner by the permit

Any decision to not approve the extension of time to the permit will have serious, unreasonable and unfair economic consequences on the landowner.

For the reasons outlined above, it is respectfully requested that Council extend the commencement and completion expiry date within Planning Permit No. PLN17/0705 by two (2) years.

If you have any queries, please do not hesitate to contact our office on 9329 2288.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Charlotte Glossop'.

Charlotte Glossop
Senior Planner
Glossop Town Planning
Cc. Permit Holder, DCA Design, Best Hooper.
Encl. as stated.



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Attachment 5 - Applicant's Legal advice on EOT

Contact: Emily Marson
Direct line: (03) 9691 0234
Email: emarson@besthooper.com.au
Principal: Dominic Scally
Our Ref: DHS:EM:201315



10 November 2020

Copious Investments Pty Ltd
2/766 Elizabeth Street
MELBOURNE VIC 3000

By email only: paulp@grimsey.com.au

Dear Sir,

**388 Queens Parade, Fitzroy North VIC 3068 ("subject site")
Planning Permit No. PLN17/0705**

We refer to your request for our advice in respect to Planning Permit No. PLN17/0705 ("Planning Permit"). More specifically, you seek our advice in the context of a request to Yarra City Council ("Council") to extend the expiry of the Planning Permit.

Summary

In our opinion, there are several strong factors that, on balance, support the grant of the extension of time to commence development under the Planning Permit, namely:

- The impact that the restrictions on the construction industry introduced by the Victorian Government due to the COVID-19 pandemic;
- The short amount of time that has elapsed since the permit issued;
- The request being made expeditiously in July 2020;
- The request being the first request to extend the permit;
- the endorsement of plans and other documents under the permit;
- the engagement of a building surveyor and steps taken to obtain a building permit (which we are instructed will be issued on receipt of the extension of time); and
- the engagement of a builder to construct the development.

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Attachment 5 - Applicant's Legal advice on EOT**Background**

The Planning Permit was issued on 19 September 2018 authorising:

Development of the land with a five storey building comprising of a ground floor restaurant and first floor offices and three dwellings above, including car parking for four vehicles located in a stack at the rear of the existing building, including demolition works within a heritage overlay and a reduction in car parking requirements and construction of a sign in a heritage overlay

Condition 20 required development to commence within two years of the date of the permit (i.e. by 18 September 2020).

Plans were endorsed under the Planning Permit by Council as follows:

- Existing floor plans, proposed floor plans, elevations and apartment types comprised in Drawing Nos. TP03 - TP07 and TP10 were endorsed by Council on 19 September 2018;
- Existing floor plans, elevations and apartment types comprised in Drawing Nos. TP03 - TP07 and TP10 were endorsed by Council on 25 July 2019; and
- On 17 April 2020 amendments were endorsed to the existing floor plans, proposed floor plans, elevations and apartment types comprised in Drawing Nos. TP03 - TP07 and TP10 that were originally endorsed by Council on 19 September 2018.

The maximum overall building height on the endorsed plans is 17.51m.

A Sustainable Management Plan and Waste Management Plan were submitted to Council for endorsement in January 2019 and were endorsed by Council on 25 July 2019.

Engineering documents have also been endorsed by the Council pursuant to Condition 7 of the permit.

Further, we are instructed that:

- A building surveyor – Metro Building Surveying - has been appointed, an application for a building permit has been lodged and the issue of a building permit pending the outcome of the request for the extension of time;
- Structural engineering, fire engineering and stormwater approvals have also been obtained;
- A tender process with a number of construction companies has been undertaken and Constructpro has been engaged as the builder for the development; and

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Copious Investments Pty Ltd

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- on receipt of the extension of time to commence development, building works will be able to commence in a short timeframe (60-90 days); and
- you have arranged for the existing office tenants to relocate from the existing building during construction.

An application to extend the planning permit was lodged with Council on or about 13 July 2020. The required fee was paid on or about 21 July 2020.

Extension of time - Planning & Environment Act 1987

Section 69 of the *Planning and Environment Act 1987* (Vic) (the Act) deals with extensions of time and states:

- (1) Before the permit expires or within 6 months afterwards, the owner or the occupier of the land which it applies may ask the responsible authority for an extension of time.**

(1A) The owner or occupier of the land to which a permit for a development applied may ask the responsible authority for an extension of time to complete the development or a stage of the development if –

(a) The request for an extension of time is made within 12 months after the permit expires; and

(b) The development or stage started lawfully before the permit expired.

(2) The responsible authority may extend the time within which the use or development or any stage of it is to be started or the development or any stage of it is to be completed or within which a plan under the Subdivision Act 1988 is to be certified.

(3) If the time is extended after the permit has expired the extension operates from the day the permit expired.

(Emphasis added)

In summary, Section 69(1) requires an extension to be made before the Planning Permit expires or within 6 months thereafter (or 12 months in respect to a development which has commenced within time).

In this instance, the request for extension of time was lodged prior to the expiry of the permit and was therefore made within time.

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No evidence has been provided to us to suggest that the development as approved by the Planning Permit has commenced.

Extension of time considerations – Kantor principles

The decision of Ashley J in *Kantor v Murrindindi Shire Council* (1997) AATR 285 is generally accepted as the starting point for a consideration of an application for an extension of time request.

Senior Member Hewet of the Tribunal in *Salfi v Whittlesea CC* [2020] VCAT 1096, summarised the *Kantor* principles as follows:

As a general observation the Council's application of the Kantor principles is too narrow. The Kantor decision identified a range of factors that could be applied to the consideration of an application to extend the time for a development to commence. Changes to planning policy is just one of those factors. In summary the principles most cited are:

- *whether there has been a change of planning policy;*
- *whether the Applicant is seeking to warehouse the permit;*
- *whether there are intervening circumstances bearing upon the grant or refusal of the request;*
- *the total elapse of time;*
- *whether the time limit originally imposed was adequate;*
- *the economic burden imposed on the Applicant by the permit; and*
- *the probability of a permit issuing should a fresh application be made.*

It is noted that the decision of *Kantor* related to an application to extend a planning permit for the sixth time.

The following further principles were articulated in the decision of *AMV Homes Pty Ltd v Moreland City Council* (Includes Summary) (Red Dot) [2015] VCAT 1699:

- *An applicant should advance good reasons as to why an extension should be granted; a request should not be approved simply because it has been asked for.*
- *The Kantor "tests" are not mandatory nor exhaustive.*

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- ***There may be other relevant considerations to those articulated in Kantor, including matters of natural justice and equity.***
- ***That the approved development is now prohibited does not mandate a decision refusing to extend the time to commence a development. However, it is something that would usually be expected to be one factor weighing against an extension of time.***
- ***Each case needs to be decided on its own facts and circumstances including whether and how the development in question would undermine or offend the changed policy or planning control regime.¹***

(Emphasis added)

Application of Kantor principlesChange in policy

In our opinion, there has been no significant substantive change in policy since the Planning Permit issued.

Amendment VC169 was introduced into the Victorian Planning Provisions (“VPP”) on 9 October 2020 which, according to the Explanatory Report, seeks to modernise the VPPs and rules to make planning ‘*more efficient, accessible and transparent*’. The Amendment also ‘*clarifies and strengthens housing policy*’.

Revised Clause 15.05S (Neighbourhood character), Clause 16.01-1S (Housing supply) and Clause 16.01-1R (Housing supply – Metropolitan Melbourne) are relevant.

In respect to Clause 15.01-5S, the Amendment introduces changes to the strategies to achieve the objective of recognising, supporting and protecting neighbourhood character, cultural identity, and sense of place. A new strategy to ‘*ensure the preferred neighbourhood character is consistent with medium and high density housing outcomes in areas identified for increased housing*’ has been inserted into Clause 15.01-5S.

Clause 16.01-1S and Clause 16.01-1R, have been simplified but still emphasise the need for the supply of new, well located and diverse housing to meet community needs and population growth.

While specific provisions may be altered, both the Planning Policy Framework and the Local Planning Policy Framework continue to support consolidation of existing urban areas, diversity of housing in proximity to transport and services, whilst also ensuring places of heritage significance are protected and enhanced.

¹ *AMV Homes* at [7].

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The introduction of Design and Development Overlay – Schedule 16 to the Yarra Planning Scheme is considered below.

Warehousing the Permit

You do not appear to be seeking to warehouse the Permit given that this is the first extension of time requested.

This weighs in favour of granting the extension of time to commence the development.

Intervening circumstances

In our opinion, restrictions on construction arising from the COVID-19 pandemic have made it more difficult for you to commence development within the timeframe of the Planning Permit and support the grant of the extension of time.

As noted by the Tribunal in the recent decision of *Nejad v Monash CC* [2020] VCAT 937 (**copy attached**), at [20], was a factor that weighed in support of granting an extension of time, commenting:

“restrictions that have been put in place during the current Covid-19 pandemic making it more difficult to commence and complete development projects within the same timeframes that apply when such restrictions do not apply ...”

These intervening circumstances weigh in favour of granting the extension of time to commence the development.

Total elapse of time

The Permit is only two years old. It is clear from the plans and documentation submitted for endorsement with Council as early as January 2019 that you have not “sat on your hands” and intended at all times to act on the permit and commence development.

The request to extend the permit was made promptly in July 2020 before the expiration of the Permit.

You have instructed us that the extension of time application was lodged when it became apparent that restrictions on the construction industry introduced by the Victorian Government would prevent you from commencing construction.

This factor weighs in favour of granting the extension of time to commence the development.

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Was the time limit adequate?

The original timeframe to comment development is a standard timeframe for permits of this nature. However, as noted in *Nejad v Monash CC* [2020] VCAT 937 at [20], it is not unusual for the making and granting of a first extension of time to be granted.

Economic burden imposed

There is nothing to suggest that the economic burden imposed on the Applicant by the Permit was excessive or unusual for a development of this nature.

However, as set out above, significant costs have been borne by the permit holder in endorsing documents under the permit, seeking to obtain a building permit and other necessary approvals, appointing a builder and negotiating with prospective tenants.

These significant costs would be thrown away if the Planning Permit were not extended.

Probability of a new permit issuing

On 1 October 2020, Amendment C231 to the Yarra Planning Scheme was gazetted which introduced Design and Development Overlay – Schedule 16 (“DDO16”) into the Scheme. This was Part 3 of Amendment C231 that was considered at a Panel hearing in June 2019 and was originally exhibited in October 2018.

DDO16 introduces mandatory height and setback requirements to Queens Parade including the subject site on a permanent basis. The subject site is located in Precinct 4 where a mandatory maximum building height of 11m is specified. Accordingly, the proposed height of the approved development is prohibited in the current scheme.

While relevant to the exercise of discretion by Council, this is just one factor to be considered in the extension of time request and does not necessitate refusal of the request.

An example of a scenario in which the Tribunal granted an extension of time to a permit that would not comply with a mandatory requirement introduced following the issue of that permit is *Dolas v Moreland CC* [2017] VCAT 1785 where the Tribunal commented at paragraph 12 regarding the garden area requirement:

I prefer the submissions made by the applicants in respect of these proceedings for the reasons set out below:

1. *The review site remains an ideal site for medium density development given its location to transport and services and there is still strong policy support at a State and local level for diversity and affordability in housing types.*

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2. *The site context is one where there is a prevalence of medium density development in the area and the permit permitted a development which is not inconsistent with neighbourhood character. I accept this will continue to evolve.*
3. *There are no external amenity impacts in dispute and the proposal is highly compliant with ResCode.*
4. *There has been no significant change in local policy to warrant a refusal. The review site remains in the General Residential Zone and in the Incremental Change Area.*
5. *The mandatory garden area requirements are a State wide provision which are applied across the State and I accept that but for the introduction of this provision, the extension would in all likelihood have been granted.*
6. *This is not an area that displays a prevailing character of open rear yards. Council does not dispute this, and conceded at the hearing that it is not seeking a single storey rear unit outcome.*
7. *There is no suggestion that the permit is being warehoused, in fact, there is an affidavit by Mr Guneser documenting the extent of work which has been done to try and activate the permit, including the sale of the units off the plan.*
8. *I accept that there have been intervening circumstances which have contributed to the delay which are problems related to obtaining finance for the construction of the units before the permit expired, pending the sale of the units off the plans.*
9. *There would be an economic burden on not only Mr Dolas but Mr Guneser if the permit was not extended.*
10. *Importantly, there are a number of third party purchasers who could also suffer detriment if the permit was not extended as contracts of sale have been entered into. This has weighed heavily in my decision to extend the permit.*
11. *This is the first extension of time request. The permit was issued two and a half years ago and the extension request was made in accordance with the requirements of the PE Act.*

An example of the Tribunal granting an extension of time to a development permit that exceeded the new mandatory building height (as a result of Amendment VC110 to the Residential Zone) is 52 Bay Road Pty Ltd v Moonee Valley CC [2018] VCAT 39 where Tribunal commented from paragraph [9]:

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- 9 *The single factor to stand against the extension of the permit is the effect of Amendment VC110 which would mean that a permit could not be granted were a fresh application for the same proposal be made today. This is because the total building height is 13.6 metres (as compared with the maximum permitted height of 11 metres) and a garden area of 30% is not provided.*
- 10 ***However, this is not a fresh application for permit but an application to extend a permit already granted. As noted in AMV Homes, each case needs to be decided on its own facts and circumstances including whether and how the development in question would undermine or offend the changed policy or planning control regime.***
- 11 *In this regard I consider that the approved development is an appropriate development for this site and will complement the area and the planning control regime surrounding it. I note Council's submission that there are no external amenity impacts in dispute and the proposal is highly compliant with ResCode. I accept the contents of the written submissions of the applicant at paragraphs 15 to 21, summarised as follows:*
- *The site is located within the edge of the GRZ with the Moonee Ponds Activity Centre to its north and east, which is undergoing significant development and has allowable height limits of 26 metres as opposed to the 13 metres proposed here.*
 - *It is a corner site facing a main road with two street frontages, a laneway frontage and non-residential interfaces to its south and west.*
 - *The development will be a mixed use development with café and retail/commercial space at ground floor and apartments on levels one to three. This will provide street level activation on this corner site sitting between the activity centre, the Telstra exchange and the Church.*
 - *The maximum building height of 13.6 metres is similar to the height of the adjacent Church steeple. In addition, the top level is set back and will appear recessive from street level.*
- 12 *In conclusion, I consider that there are a number of factors which support the grant of an extension and do not consider that the amendments to the GRZ outweigh the supporting factors in this instance. I find that an extension of time should be granted to commence and complete development and to commence use of the land pursuant to the permit.*

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(Emphasis added)

A permit would not issue for the development under DDO16. This weighs against the grant of the extension of time.

However, the likelihood of a new planning permit issuing for the development is just one factor to be taken into account in considering a request to extend time under a permit.

Other factors – natural justice and procedural fairness

In our opinion, it is a matter of natural justice and procedural fairness that the impact of the COVID-19 Pandemic and consequential restrictions introduced on the construction industry be taken into account in considering the extension of time request.

Further, the application with Council has been on foot for a significant period of time and no decision has been made by Council despite verbal advice being provided to you that the extension of time would be granted.

These factors weigh in support of the extension of time being granted.

Summary

In our opinion, on balance, significant weight should be afforded to the steps taken to commence development under the Planning Permit and the delay that has been caused by COVID-19 restrictions.

Accordingly, in our opinion, there are strong factors in support of granting the extension of time to extend the permit, namely:

- The impact that the restrictions on the construction industry introduced by the Victorian Government due to the COVID-19 pandemic;
- The short amount of time that has elapsed since the permit issued;
- The request being made expeditiously in July 2020;
- The request being the first request to extend the permit;
- the endorsement of plans and other documents under the permit;
- the engagement of a building surveyor and steps taken to obtain a building permit (which we are instructed will be issued on receipt of the extension of time); and
- the engagement of a builder to construct the development.

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Please contact the writer with any queries.

Yours faithfully
BEST HOOPER



Dominic Scally
Principal



Emily Marson
Senior Associate

Enc.

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